TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1936

No. 658

PAUL SENN, APPELLANT,

vs.

TILE LAYERS PROTECTIVE UNION, LOCAL No. 5, CHARLES SCHREIBER, ET AL.

APPEAL FROM THE SUPREME COURT OF THE STATE OF WISCONSIN

FILED JANUARY 16, 1937.

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[fol. 1] [File endorsement omitted]

IN SUPREME COURT OF THE UNITED STATES

PAUL SENN, Appellant,

vs.

TILE LAYERS PROTECTIVE UNION, LOCAL NO. 5, CHARLES SCHREIBER, Tile Layers Helpers Union, Local No. 47, and Herbert Sebastian, Appellees

ORDER ALLOWING APPEAL—Filed December 7, 1936

The appellant in the above entitled suit having prayed for the allowance of an appeal in the above entitled cause to the Supreme Court of the United States from a judgment made and entered in the above entitled suit in the Supreme Court of the State of Wisconsin on the 29th day of June, 1936, a motion for re-hearing having been denied by the Supreme Court of the State of Wisconsin on the 15th day of September, 1936, and from each and every part thereof, and having presented and filed his petition for appeal, assignment of errors, prayer for reversal and statement pursuant to the statutes and rules of the Supreme Court of the United States in such case made and provided;

It Is Hereby Ordered that an appeal be and the same is hereby allowed to the Supreme Court of the United States from the Supreme Court of the State of Wisconsin in the above entitled cause as provided by law, and

It Is Further Ordered that the Clerk of the Supreme Court of the State of Wisconsin shall prepare and certify [fol. 2] a transcript of the record, proceedings and judgment in this cause and transmit the same to the Supreme Court of the United States so that he shall have the same in said court in accordance with the rules of the Supreme Court of the United States.

It Is Further Ordered that security for costs on appeal be fixed in the sum of Five Hundred and 00/100 ($500.00) Dollars.

Dated this 7th day of December, 1936.

Marvin B. Rosenberry, Chief Justice of the Supreme Court of the State of Wisconsin. (Seal Supreme Court of Wisconsin.)

[fol. 3] IN SUPREME COURT OF THE UNITED STATES

[Title omitted]

PETITION FOR APPEAL—Filed December 7, 1936

Considering himself aggrieved by the final decision of the Supreme Court of the State of Wisconsin in the above entitled cause, the appellant herein prays that an appeal be allowed to the Supreme Court of the United States herein and for an order fixing the amount of the bond thereon.

ASSIGNMENT OF ERRORS

Now comes the above named appellant and in filing herewith his petition for appeal says that there are errors in the records and proceedings in the above entitled cause, and, for the purpose of having the same reviewed in the United States Supreme Court, makes the following assignment of errors:

1. Said Supreme Court of the State of Wisconsin erred in rendering judgment affirming the judgment of the Circuit Court of Milwaukee County, Wisconsin, in holding [fol. 4] the Wisconsin Statutes of 1935, Sections 103.51 to 103.63, as construed by said Circuit Court of Milwaukee County, Wisconsin, in this cause, to be a constitutional and valid act not in contravention of Section 1 of the Fourteenth Amendment to the Constitution of the United States, in that such construction deprived appellant of liberty or property without due process of law, and denied to appellant, a person within the jurisdiction of the State of Wisconsin, the equal protection of the laws.

2. Said Supreme Court of the State of Wisconsin erred in failing to render judgment in favor of the appellant and thus reversing the judgment of the Circuit Court of Milwaukee County, Wisconsin, and in refusing, by failing to reverse said judgment of the Circuit Court of Milwaukee County, Wisconsin, to grant the relief prayed for by the appellant, for the reason that the refusal of the Supreme Court of the State of Wisconsin to so reverse said judgment of the Circuit Court of Milwaukee County, Wisconsin, was based upon a construction of said Wisconsin Statutes of 1935, Sections 103.51 to 103.63, as applied to this

cause, holding said statutes constitutional and valid, for the reason that such construction of said statutes is in contravention of Section 1 of the Fourteenth Amendment to the Constitution of the United States in that such construction of said statutes deprived the appellant of liberty or property without due process of law and denied to appellant, a person within the jurisdiction of the State of Wisconsin, the equal protection of the laws.

[fol. 5] 3. Said Supreme Court of the State of Wisconsin erred in granting judgment affirming the judgment of the Circuit Court of Milwaukee County, Wisconsin, because by the affirmance of said judgment of the Circuit Court of Milwaukee County, Wisconsin, the judgment of the Supreme Court of the State of Wisconsin operated as a judicial decision to deprive the appellant of liberty or property without due process of law and denied to the appellant, a person within the jurisdiction of the State of Wisconsin, the equal protection of the laws, in contravention of Section 1 of the Fourteenth Amendment to the Constitution of the United States, for the reason that the judgment of the Supreme Court of the State of Wisconsin affirming the judgment of the Circuit Court of Milwaukee County operated as a denial to the appellant of a judicial remedy for the protection of appellant's rights of liberty and property and the equal protection of the laws under Section 1 of the Fourteenth Amendment to the Constitution of the United States in that said judgment of the Supreme Court of the State of Wisconsin deprived appellant of a judicial remedy for the protection of such rights and was, in effect, a taking of liberty or property from the appellant without due process of law and a denial to the appellant, a person within the jurisdiction of the State of Wisconsin, of the equal protection of the laws under said Section 1 of the Fourteenth Amendment to the Constitution of the United States.

4. Said Supreme Court of the State of Wisconsin erred in failing to render judgment reversing the judgment of [fol. 6] the Circuit Court of Milwaukee County, Wisconsin, in that the refusal of the Supreme Court of the State of Wisconsin to so reverse the judgment of the Circuit Court of Milwaukee County, Wisconsin, and the refusal of the Supreme Court of the State of Wisconsin to order,

by such reversal, the said Circuit Court of Milwaukee County, Wisconsin, to grant appellant the relief prayed for was a judicial act depriving appellant of liberty or property without due process of law and denying to appellant, a person within the jurisdiction of the State of Wisconsin, the equal protection of the laws, in contravention of Section 1 of the Fourteenth Amendment to the Constitution of the United States, and such refusal of the Supreme Court of the State of Wisconsin to reverse said judgment of the Circuit Court of Milwaukee County, Wisconsin, in effect denied to the appellant a judicial remedy for the protection of his rights under said Section 1 of the Fourteenth Amendment to the Constitution of the United States.

5. Said Supreme Court of the State of Wisconsin erred in affirming the judgment of the Circuit Court of Milwaukee County, Wisconsin, and thus holding said Sections 103.51 to 103.63 of the Wisconsin Statutes of 1935, formerly Sections 268.18 to 268.30 of the Wisconsin Statutes of 1933, as construed by said Supreme Court of the State of Wisconsin in this cause, constitutional and valid in that they did not deprive the appellant of liberty or property without due process of law and did not deny the appellant, a person within the jurisdiction of the State of Wisconsin, the equal protection of the laws.

[fol. 7] 6. Said Supreme Court of the State of Wisconsin erred in rendering judgment refusing to hold Sections 103.51 to 103.63 of the Wisconsin Statutes of 1935, formerly Sections 268.18 to 268.30 of the Wisconsin Statutes of 1933, invalid and in contravention of Section 1 of the Fourteenth Amendment to the Constitution of the State of Wisconsin, for the reason that the judicial construction of said sections, as construed by said Supreme Court of the State of Wisconsin, conferring a legal right upon the appellees to engage in the conduct against the appellant complained of, operated to deprive appellant herein of liberty or property without due process of law and to deny to the appellant, a person within the jurisdiction of the State of Wisconsin, the equal protection of the laws, in contravention of Section 1 of the Fourteenth Amendment to the Constitution of the United States.

7. Said Supreme Court of the State of Wisconsin erred in affirming the judgment of the Circuit Court of Milwaukee

County, Wisconsin, for the reason that the judgment of the Supreme Court of the State of Wisconsin operated as a judicial decision depriving the appellant of liberty or property without due process of law and denying to the appellant, a person within the jurisdiction of the State of Wisconsin, the equal protection of the laws, in contravention of Section 1 of the Fourteenth Amendment to the Constitution of the United States.

[fol. 8] PRAYER FOR REVERSAL

For which errors the appellant, Paul Senn, prays that the said judgment of the Supreme Court of the State of Wisconsin, rendered June 29, 1936, and on which a motion for re-hearing was denied on the 15th day of September, 1936, in the above entitled cause, be reviewed by the Supreme Court of the United States and reversed, and a judgment rendered in favor of the appellant for costs.

Dated this 7th day of December, 1936.

Leon B. Lamfrom, Attorney for Appellant.

[fols. 9-46] [File endorsement omitted]

[fols. 47-49] Bond on Appeal for $500.00, approved and filed December 7, 1936, omitted in printing.

[fols. 50-54] Citation, in usual form, showing service on Joseph A. Padway, filed December 11, 1936, omitted in printing.

[fol. 55] [File endorsement omitted]

SUPREME COURT OF THE UNITED STATES

[Title omitted]

STIPULATION AS TO TRANSCRIPT OF RECORD—Filed January 4, 1937

To Arthur A. McLeod, Clerk of the Supreme Court of the State of Wisconsin;

You are Hereby Requested to make a transcript of the record to be filed in the Supreme Court of the United States

by reason of an appeal allowed from the judgment rendered by the Supreme Court of Wisconsin in this cause.

It is Hereby Stipulated by and between the parties to this cause, by their respective attorneys, that the following portions of the record shall be included in said transcript:

1. Pleadings—pp. 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 14, 15, 16, 17, 18, 19, 20.
2. Decision—pp. 22-23.
3. Findings of Fact and Conclusions of Law—pp. 24-30.
4. Judgment Appealed From—pp. 32-33.
5. Bill of Exceptions:

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[fol. 56] Lines 8, 9, 10, 11 on page 48
Lines 18, 19, 20, 21, 22 on page 49
First 10 lines and last 5 lines on page 50
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Lines 1, 2, 3, 4, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19 on page 52
Lines 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21 on page 53
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Last 16 lines on page 66
First 8 lines on page 67
Last 24 lines on page 68
Last 5 lines on page 69
pp. 70, 71, 72
First 23 and last 2 lines on page 73
First 20 lines on page 74
Last 11 lines on page 75
pp. 76, 77, 78, 79, 80, 81, 82
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Last 22 lines on page 84
Last 23 lines on page 87
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6. Plaintiff's Exhibits 1 and 7.
7. Defendants' Exhibit 3.

Dated this 30th day of December, 1936.

Leon B. Lamfrom, Attorney for Appellant. Joseph A. Padway, Attorney for Appellees.

[fol. 60] [Caption omitted]

[fol. 61] IN CIRCUIT COURT OF MILWAUKEE COUNTY

Case No. 148674

PAUL SENN, Plaintiff,

vs.

TITLE LAYERS PROTECTIVE UNION, LOCAL NO. 5, CHARLES SCHREIBER, Tile Layers Helpers Union, Local No. 47, and Herbert Sebastian, Defendants

NOTICE OF APPEAL—Filed April 10, 1936

To Jas. L. McCormack, Clerk of the Circuit Court of Milwaukee County, Wisconsin; Joseph A. Padway, 212 West Wisconsin Avenue, Milwaukee, Wisconsin, attorney for defendants.

Please Take Notice that Paul Senn, plaintiff in the above entitled action, hereby appeals to the Supreme Court of the State of Wisconsin from that certain judgment entered and docketed in the above entitled action in the Circuit Court of Milwaukee County on the 3rd day of April, 1936, and from the whole thereof, wherein and whereby it was adjudged and decreed that the complaint of the plaintiff be dismissed on the merits, without costs.

Dated this 9th day of April, 1936.

Lamfrom, Tighe, Engelhard & Peck, Attorneys for Plaintiff.

[File endorsements omitted.]

[fol. 62] Copy Received Apr. 10, 1936. Jos. A. Padway, Attorney.

Service admitted this 10th day of April 1936. Jas. L. McCormack, Clerk of Circuit Court, Milwaukee County, Wis., by Rhea F. Butzke, Deputy Clerk.

Lamfrom, Tighe, Engelhard & Peck, Attorneys and Counselors at Law, 208 East Wisconsin Avenue, Milwaukee, Wis., Attorneys for Plaintiff.

[fols. 63-67] Bond on appeal for $250.00, approved and filed April 11, 1936, omitted in printing.

[fol. 68] [File endorsement omitted]

IN CIRCUIT COURT OF MILWAUKEE COUNTY

[Title omitted]

ORDER TO SHOW CAUSE—Filed December 28, 1935

On reading and filing the verified complaint herein and on motion of plaintiff,

It Is Hereby Ordered that the above named defendants show cause, if any they have, before the Honorable John J. Gregory, Calendar Judge of the Circuit Court of Milwaukee County, in his courtroom on the fifth floor of the Milwaukee County Courthouse, on the 30 day of December, 1935, at 9 o'clock A. M. on said day, or as soon thereafter as counsel can be heard, why a temporary injunction should not be issued enjoining and restraining the defendants, and each of them, and all persons acting in cooperation with them, from in any wise picketing the premises of the plaintiff and why they should not be likewise restrained and enjoined from representing or stating in any manner whatsoever that the plaintiff is unfair in his dealings with the defendants and why they should not be restrained and enjoined from picketing the premises of owners, contractors or architects or any other persons who engage the plaintiff as subcontractor or transact any business with the plaintiff or who wish to deal with the plaintiff, and why, in addition, the defendants should not be restrained and enjoined from doing those acts and things set forth in the prayer in the complaint for a temporary injunction.

[fol. 69] It Is Further Ordered that the hearing of this order to show cause be upon testimony of witnesses in open court at said time and place, at which time said defendants may appear and have an opportunity to cross examine the witnesses of the plaintiff herein and to offer opposition thereto.

Let a copy of this order be served upon the defendants at least forty-eight (48) hours prior to the time set for said hearing.

Dated this 27th day of December, 1935.

John J. Gregory, Circuit Judge.

[fol. 70] [File endorsement omitted]

IN CIRCUIT COURT OF MILWAUKEE COUNTY

[Title omitted]

SUMMONS—Filed December 28, 1935

State of Wisconsin, to the said defendants and each of them:

You Are Hereby Summoned to appear within twenty (20) days after the service of this Summons, exclusive of the day of service, and defend the above entitled action in the Court aforesaid; and in case of your failure so to do, judgment will be rendered against you according to the demand of the Complaint, of which a copy is herewith served upon you.

Lamfrom, Tighe, Engelhard & Peck, Attorneys for Plaintiff, Post Office Address: 1416-1427 Bankers Building, 208 E. Wisconsin Avenue, Milwaukee, Wisconsin.

[fol. 71] [File endorsement omitted]

IN CIRCUIT COURT OF MILWAUKEE COUNTY

PAUL SENN, Plaintiff,

vs.

TILE LAYERS PROTECTIVE UNION, LOCAL NO. 5, CHARLES SCHREIBER, Tile Layers Helpers Union, Local No. 47, and Herbert Sebastian, Defendants.

COMPLAINT—Filed December 28, 1935

Now comes the plaintiff by Lamfrom Tighe Engelhard & Peck, his attorneys, and for cause of action alleges as follows:

1. That at all times hereinafter mentioned the plaintiff is, and was, a resident of the City and County of Milwaukee, State of Wisconsin, residing at 3162 North First Street, in said City, and that his occupation is that of tile setter and tile contractor under the firm name of Paul Senn & Co.

2. That the defendant Tile Layers Protective Union, Local No. 5, and the defendant Tile Layers Helpers Union, Local No. 47, each was and is at all times hereinafter mentioned a voluntary unincorporated association of individuals and each was and is what is commonly known as a trade union; that the business of each is that usually carried on by trade unions and that the business address of the defendant Tile Layers Protective Union, Local No. 5, is 2904 North 47th Street, Milwaukee, Wisconsin, and the business address of the defendant Tile Layers Helpers Union, Local No. 47, is 3800 North 7th Street, Milwaukee, Wisconsin.

3. That the defendant Charles Schreiber is the business agent of said Tile Layers Protective Union, Local No. 5, and is by occupation a tile setter and resides at 2904 North 47th Street, Milwaukee, Wisconsin.

[fol. 72] 4. That the defendant Herbert Sebastian is the business agent of said Tile Layers Helpers Union, Local No. 47, and is by occupation a tile layer's helper and resides at 3800 North 7th Street, Milwaukee, Wisconsin.

5. That this action is brought against all of the members of said local union No. 5 and the members of said local union No. 47 and against the agents, employees and representatives of said local union No. 5 and local union No. 47, and this suit is brought against the said locals in their own names and against Charles Schreiber and Herbert Sebastian as officers and representatives of all of the members of said locals, their agents, employees and representatives, for the reason that it is impracticable to join the individual members of said local unions because of their large numbers.

6. That the plaintiff has been for approximately four (4) years and is presently conducting the business of a tile contractor from his residence at 3162 North First Street in the City of Milwaukee, and that in connection with the said business of tile contractor he rents a show room at 4738 West Lisbon Avenue, in the City of Milwaukee, wherein he has on display samples of tile. That the plaintiff customarily employes one tile layer and one helper, depending upon the amount of work he has contracted to do at a given time; that the plaintiff, in fulfilling his con-

tracts for the setting of tile, works with his tools and hands either as a tile layer or tile layer's helper, applying his skill, knowledge and energy in the same manner as though he were an employee working for someone else instead of being a self-employer; that plaintiff has invested approximately Sev[illegible] Hundred ($700.00) Dollars in tools, equipment and supplies and that he has an annual overhead for [fol. 73] rent, telephone, heat, operation of motor vehicles and other incidentals, of approximately Six Hundred ($600.00) Dollars; that during 1935 the plaintiff netted approximately Fifteen Hundred ($1500.00) Dollars on contracts performed by him and his employees. That the plaintiff, together with his wife and four (4) children, have as their sole source of income the business and occupation of the plaintiff; that during the year 1935 the plaintiff worked as a tile setter and helper approximately seven hundred fifty (750) hours in addition to the time and energy that he put into his business in bidding on contracts and in engaging in such activities as a contractor would engage in who was not a self-employer; that the net income for the year 1935 of Fifteen Hundred ($1500.00) Dollars reflects approximately Seven Hundred Fifty ($750.00) Dollars which the plaintiff earned by laboring directly with his tools and hands in the performance of contracts.

7. That the plaintiff in the majority of cases is a subcontractor to the principal contractor and that as such subcontractor he and his men install the tile in bath rooms of homes or install tile in any buildings requiring that kind of installation.

8. That none of the employees of the plaintiff are members of either of the said defendant unions; that no contractual relation of any kind exists between the plaintiff and the defendant unions; that the defendant unions have not been designated by any of the plaintiff's employees as their agent for collective bargaining or for any other purpose.

9. That between March 14, 1935, and December 6, 1935, the business agents and other representatives of the defendant unions have demanded of the plaintiff that he enter [fol. 74] into a contract with their respective unions by the terms of which the plaintiff was to employ only members of their respective unions and under such terms and con-

ditions as are commonly known as union wages, hours and working conditions; that in addition to the above demands the said unions through their representatives demanded of the plaintiff that he refrain entirely from engaging in any work as a tile layer or helper in the performance of any of his contracts and that he should under no circumstances use his tools or act as a helper in the installation of any of the materials customarily set or laid by a tile layer and his helper; that the plaintiff was at all times ready, willing and able to agree with the defendant unions to all the terms of the proposed contracts submitted to the plaintiff except that provision which required the plaintiff to desist from engaging personally in his trade as a tile setter or as helper and that the plaintiff at all times stated to the representatives of the defendant unions that he could not and would not agree not to work at his trade in the performance of contracts he obtained either as principal contractor or as subcontractor but that he was ready, able and willing to agree to all other provisions of their proposed contracts.

10. That because of the plaintiff's persistent refusal to give up his right to work as a means of a livelihood the defendant unions entered into a conspiracy to unlawfully and maliciously molest, harrass and harm the plaintiff by diverse means so as to force him against his will either to acceed to the demand that he stop engaging in his trade of tile layer or helper or to ruin him in his business and trade; that pursuant to said conspiracy the defendants caused the residence of the plaintiff to be picketed almost daily since December 6, 1935, the pickets varying in numbers from two to four, and have likewise caused the plain-
[fol. 75] tiff to be pursued upon the highways of the City of Milwaukee by pickets for the purpose of discovering where plaintiff and his men were at the time performing the work of installing tile; that as a result of the defendants conduct, through their agents, employees and members, the plaintiff has endured the harrassment, molestation and interference incident to having his home picketed and bannered and that the plaintiff has been put to the continuous trouble of dodging his pursuers in order to conceal from them where he and his men were performing their work so as to avoid the picketing by the defendants at such premises at which the plaintiff and his men were at work.

11. That the defendants, as part of their conspiracy directed towards this plaintiff, have threatened to picket the premises of the owners and the offices of contractors and of architects who let work to this plaintiff unless this plaintiff acceeds to the demand of the defendants that the plaintiff perform no personal work in the execution of his contracts as aforesaid.

12. That the activities of the defendants thus far and the threatened continued activities of the defendants have caused and will cause the plaintiff irreparable injury for which there is no adequate remedy at law and that unless the said defendants are not restrained by an injunction from this court, this plaintiff will be denied his right to earn his living by the exercise of his skill and energy as a worker.

13. That the defendants willfully, maliciously and unlawfully are engaging in concerted action to ruin this plaintiff in his trade and business for the sole purpose of forcing this plaintiff against his will to agree with the defendants not to work with his tools and his hands at his trade, all in violation of Section 343.681.

[fol. 76] 14. Plaintiff alleges that he is not seeking relief by injunction in a case involving or growing out of a labor dispute but alleges that he is applying to the court for relief on the sole ground that the defendant unions, their members, servants, employees, associates and sympathizers are conducting illegal picketing and threaten further illegal picketing and are otherwise engaged in illegal conduct, all in violation of Section 343.681 of the Statutes, and plaintiff alleges that the provisions of Section 268.18 to 268.30 of the Statutes of 1933 are not invoked by this plaintiff for the reason that as plaintiff is informed and believes, there is neither in fact nor in law a labor dispute in existence between the plaintiff and the defendants but that the defendants are engaging in an arbitrary, unlawful and malicious interference with the business and property rights of this plaintiff.

Wherefore, plaintiff prays:

(a) That the defendants be required to show cause, if any they have, why plaintiff should not have a temporary injunction enjoining the defendant unions, their members, servants, employees, sympathizers and associates from do-

ing any act whatever which directly or indirectly interferes with the conduct of the plaintiff's business or the conduct of the plaintiff's trade, business and other pursuits and that in particular the defendants be enjoined from publishing, stating or proclaiming that the plaintiff is unfair to organized labor or to the defendant unions, and, from doing any act or thing which in any manner would have a tendency to persuade any contractors, owners or architects to refuse to deal with this plaintiff as a tile contractor or to refuse to deal with the plaintiff for the purpose of transacting any other business; and from interfering with the plaintiff and his family's peaceful occupancy of their home.

[fol. 77] (b) That the said defendants, their agents, confederates, servants, employees, members and sympathizers be restrained by a permanent injunction from attempting in any manner to coerce this plaintiff not to engage his hands or tools in the work of tile layer or helper; from in any wise attempting to molest, intimidate or coerce any of the contractors, architects, owners or other persons seeking to transact business with the plaintiff; from coercing by any act whatsoever the plaintiff to do any act against his will; and from representing or stating that the plaintiff is unfair to organized labor or in his dealings with his employees, with the defendants or any other person; and from interfering in any unlawful manner with any person or persons who wish to deal with the plaintiff and who wish to continue their employment with the plaintiff; and from interfering in any unlawful manner with the plaintiff and the family of the plaintiff at his residence or any where else where the plaintiff and his family may lawfully be.

(c) That the defendants be decreed to pay the costs of this suit and that the plaintiff be given such other and further relief as may be just and equitable in the premises.

Lamfrom Tighe Engelhard & Peck, Attorneys for Plaintiff.

[fol. 78] *Duly sworn to by Paul Senn. Jurat omitted in printing.*

[fol. 79] [File endorsement omitted]

IN CIRCUIT COURT OF MILWAUKEE COUNTY

[Title omitted]

ANSWER—Filed January 14, 1936

The defendants above named, by Joseph A. Padway, their attorney, answering plaintiff's complaint, admit, deny and allege as follows:

1. Admit the residence of plaintiff and that he is a tile contractor under the firm name of "Paul Senn & Company", but deny that he is a practical tile setter.

2. Admit the allegations set forth in paragraph 2.

3. Admit the allegations set forth in paragraph 3.

4. Admit the allegations set forth in paragraph 4.

5. Admit the allegations set forth in paragraph 5.

6. In answer to paragraph 6, allege the following:

(a) That plaintiff has held himself out as a tile contractor and conducted his business in connection with his residence at 3162 North First Street, in the City of Milwaukee; that he also maintains a show room at 4738 West Lisbon Avenue.

(b) Denies knowledge as to how many employees plaintiff customarily employs in his tile contracting business, but alleges that he does employ tile layers and tile helpers in connection with his business as tile contractor.

(c) Admits that the plaintiff works with the tools of the tile laying trade both as a tile layer and a tile layer's [fol. 80] helper, but in that connection alleges that he is not a practical tile setter nor recognized as possessing the qualifications for a helper to aid journeymen tile layers, nor does he possess the qualifications of a journeyman tile helper as prescribed by the Constitution and Rules of Order governing the defendant Unions or as is generally and customarily recognized in the tile laying industry.

(d) Denies knowledge or information on which to base the belief as to the investments of the plaintiff in his tile business.

(e) Denies knowledge of the specified items and facts alleged by the plaintiff in said paragraph 6.

7. In answer to paragraph 7, defendants allege that the plaintiff has held and does hold himself out as a general tile contractor, engaged in the tile contracting business, and holds out the location of said business to be at 3162 North First Street, in the City and County of Milwaukee, State of Wisconsin.

8. Admit the allegations contained in paragraph 8 of the complaint.

9. In answer to paragraph 9, defendants allege that for some time and prior to March 14, 1935, and since that time they have been engaged in an effort to unionize the tile industry for the purpose of regulating their wages and their hours and conditions of labor, the protection of their individual rights, and the prosecution of their trade, having in view their mutual protection and benefit; that at some time prior to December 6, 1935, the defendants negotiated with a number of tile contractors in the City and County of Milwaukee for the purpose of securing a collective agreement governing their wages, hours and working [fol. 81] conditions as craftsmen in the tile laying industry. That as a result of said negotiations, an agreement was entered into by a number of tile contractors in the City and County of Milwaukee and the defendants, governing wages, hours and working conditions in the industry; that all of the contractors who have entered into said agreement with the defendant Unions are known in the trade and industry as Union contractors, and that all contractors who have refused to enter into said agreement are known in the trade and industry as non-Union contractors.

10. That non-Union contractors conduct their business and their relationships with their employees in such a manner as tends to and does affect the interests and welfare of the defendants and their members to their detriment.

11. That the tile industry for several years last past has been in a demoralized state because of a lack of building operations; that the defendants and their members have been in competition with non-Union tile setters and helpers in the economic struggle for work as a means of livelihood.

12. That by virtue of the depressed condition of the industry and as a means of affording the defendants and their members employment and a livelihood, they have found it necessary for the protection of their individual rights in the prosecution of their trade to require of all employers desiring to conduct a Union shop to agree:

"that no individual, member of a partnership or corporation engaged in the tile contracting business shall work with the tools or act as helper, but that the installation of all materials within the classification of tile work shall be done by journeymen members of the Tile Layers' Protective Union."

[fol. 82] 13. That the defendants, by their representatives, have repeatedly offered to accept the plaintiff as a Union contractor and have made such offer to him prior to the signing of the agreement with the contractors, who have signed the same; and the defendants have offered to the plaintiff the opportunity to discuss and negotiate respecting an agreement prior to the signing of the agreement with the Union contractors as afore referred to. That plaintiff has persistently refused to consider any proposed agreement or sign any agreement, which will contain as a condition that he shall not work with the tools of the trade or employ himself in the recognized capacity of helper within the trade. That the plaintiff, prior to the making of the agreement with the Union contractors as afore referred to and since the making of said agreement, has conducted his establishment in a manner violative of the recognized trade principles of the defendants and their members. That the plaintiff has himself worked at the trade, although he is not a practical tile setter within the rules described by the defendant Unions or known and recognized within the industry. That the plaintiff has secured Union help and employed the same in his non-Union business with knowledge that the same was contrary to Union rules. That he has encouraged Union employees to violate Union rules and thereby lose their membership in the Union. That he has employed himself and others for hours longer than those prescribed by the Union and considered by the Union as beneficial to their craft and trade. That he has employed himself and others on Sunday and holidays upon terms and conditions contrary to those pre-

scribed by the Union and which the Union considers highly detrimental to the welfare of its members in the industry. That the plaintiff has refused to sign said agreement, unless [fol. 83] certain employees, whom he designated by name, were taken into the Union and permitted to work for him. That the Union advised plaintiff that it could not agree to accept said individual as a member of the Union because said person had been guilty of violating Union rules while a member of said Union.

14. That in order for a tile contractor to be accepted by the defendant Union as a Union contractor, he is required to abide by certain recognized terms and conditions established by the Unions for the protection of their individual rights in the prosecution of their trade.

15. That among said rules, as a condition of transacting business with a contractor as a Union contractor, the defendant Unions and their International prescribe among other things the following:

"Article XX

Section 6. Members of the I. U. shall not accept employment with a contractor who works with the tools of the trade unless said contractor is a practical • • • tile setter, • • •."

16. That the constitution and by-laws of the Tile Layers' Protective Union Local No. 5 of Milwaukee, Wisconsin, provide:

"Section 29. No member shall be allowed to work in a shop or on a job with an expelled or suspended member of this Union."

"Section 30. Members shall not accept employment with a contractor who works with the tools of the trade unless said contractor is a practical tile setter."

"Section 38. Members will not allow helpers to do any of the mechanics work. Helpers work will consist of the mixing and carrying of all mortar, unpacking all tile, etc. The cutting and setting of tile and the washing and grouting will also be conceded to the helper."

17. That the defendants cannot accept the plaintiff as a Union contractor because of his demand that the Union accept as a member the employee designated by him, for to

do so would violate Section 29 of the constitution afore referred to. That the defendants cannot accept the plain-
[fol. 84] tiff as a Union contractor because he refuses to abide by Section 6 of Article XX of the International Union's constitution and of Section 30 of the Local constitution. That the defendants cannot accept the plaintiff as a Union contractor because he refuses to accept the conditions set forth in Section 38 governing helpers.

18. That the defendants desire that the industry be unionized and that the plaintiff unionize his plant, but that the defendants find it is necessary for the protection of their craft, the promotion of their welfare and the protection of their individual rights in the prosecution of their trade or trades, that the industry grant to the defendants and their members the wages prescribed by the defendants, the schedule pertaining to the payment of overtime work, and that distinction between contractors and journeymen be maintained, and that persons desiring to work as journeymen and helpers in the tile laying industry acquire their practical knowledge and skill in the trade through apprenticeship and other technical training as provided in Article XVI of the International constitution governing the trade and industry. That among the purposes for which the defendants are organized is to maintain,

"carry on labor Unions • • • for the purpose of aiding their members to become more skillful and efficient workers, the promotion of their general intelligence, the elevation of their character;"

That Article 3 of the constitution and by-laws of the Tile Layers' Protective Union Local No. 5, Milwaukee, Wisconsin, provides among other things:

"The object of this Union is to encourage a higher standard of skill, to cultivate feelings of friendship among the men of our craft, to assist each other to procure employment, to reduce the hours of daily labor, to secure adequate pay for our work, and by legal and proper means to elevate the legal, moral, intellectual and social conditions of our members."

[fol. 85] 19. Answering paragraph 10, defendants deny that they have entered into any conspiracy or unlawful or malicious conduct.

20. Defendants admit that in order to induce the plaintiff to conduct a Union shop upon terms and conditions prescribed by said Union and which plaintiff has steadfastly refused to do, they and their members have sought to bring economic pressure on the plaintiff by engaging in peaceful picketing and peaceful persuasion as permitted and prescribed by law. Defendants deny that they are engaged in any unlawful conduct.

21. Further answering plaintiff's complaint, defendants deny each and every matter of fact and thing not hereinbefore specifically admitted, denied or qualified.

Wherefore, defendants demand that plaintiff's complaint be dismissed with costs.

Joseph A. Padway, Defendants' Attorney.

Duly sworn to by F. W. Melville, Sr. Jurat omitted in printing.

[fol. 86] [File endorsement omitted]

IN CIRCUIT COURT OF MILWAUKEE COUNTY

Case No. 148-674

PAUL SENN, Plaintiff,

vs.

TITLE LAYERS' PROTECTIVE UNION LOCAL NO. 5; CHARLES SCHREIBER, Tile Layers Helpers Union Local No. 47, and Herbert Sebastian, Defendants.

Proceedings Had Before Honorable Otto H. Breidenbach, Judge Presiding,

January 30, 1936, at 2:00 P. M.

Appearances:

Leon B. Lamfrom, Esquire, and A. J. Englehard, Esquire, Attorneys for Plaintiff.

Joseph A. Padway, Esquire, Attorney for Defendants.

DECISION—Filed January 30, 1936

I have given this matter careful consideration and it presents a very interesting and very serious question and a

somewhat close question, but I have decided that the more recent trend of cases upholds the contention of the defendant that the injunction should not be issued. Injunction should be issued only in the clearest case and I am not satisfied that the case at bar is such an one. I feel very much inclined to adopt the concurring opinion in Rorabeck vs. Motion Picture Machine Operators' Union, cited by plaintiff. I consider that decision correctly states the rule controlling in this case. The court, Judge Hallam, states as follows:

[fol. 87] "I do not understand that the right of a man to work in his own business is questioned, nor do I understand that there is any claim of right of defendants to destroy plaintiff's business' on any ground. I understand that defendants have the right to refuse to work as fellow workmen with non-union men or with an employer, and that they have a right, in a proper and orderly manner, to advise one another, or the public, that a certain employer does not employ union operatives, or that he insists on operating his own machines. It seems to me the main question in the case is whether the conduct of defendants has amounted to more than that. If not, their acts have not been unlawful." The more recent trend of decisions upholds the contention of defendants that the case at bar presents a labor dispute. And that the rule contained in Paragraph III of the proposed contract is not in itself unlawful, its purpose being to ameliorate the condition of the members of the Union. There is no showing of malice. The Injunction, therefore, should be denied.

[fol. 88] [Filed endorsement omitted]

IN CIRCUIT COURT OF MILWAUKEE COUNTY

[Title omitted]

Findings of Fact and Conclusions of Law—Filed March 21, 1936

The above entitled action having duly come on for trial, the plaintiff appearing by Lamfrom, Tighe, Engelhard & Peck, by Leon B. Lamfrom and A. J. Engelhard, his attorneys, and the defendants appearing by Joseph A. Padway, their attorney, and the case having been tried upon the merits, and the case having been fully and completely

argued before the Court, and the Court having taken the matter under advisement, and being now well and sufficiently advised in the premises, hereby makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. That the plaintiff is and was a resident of the City and County of Milwaukee, State of Wisconsin, residing at 3162 N. First Street, in said city; that he is engaged in the tile business as a contractor, and that he conducts his business under the name of "Paul Senn & Co. Title Contracting, 3162 N. First Street, Milwaukee, Wis."

2. That the defendant, Tile Layers Protective Union, Local No. 5, and the defendant, Tile Layers Helpers Union, Local No. 47, each was and is a voluntary unincorporated association of individuals and each was and is what is commonly known as a trade union; that the business of each [fol. 89] is that usually carried on by trade unions; that the business address of the defendant, Tile Layers Protective Union, Local No. 5, is 2904 N. 47th Street, Milwaukee, Wisconsin, and that the business address of the defendant, Tile Layers Helpers Union Local No. 47 is 3800 N. 47th Street, Milwaukee.

3. That the defendant, Charles Schreiber, is the business agent of said Tile Layers Protective Union, Local No. 5, and is by occupation a tile setter and resides at 2904 N. 47th Street, Milwaukee, Wisconsin.

4. That the defendant, Herbert Sebastian, is the business agent of said Tile Layers Helpers Union, Local No. 47, and is by occupation a tile layers helper and resides at 3800 N. 47th Street, Milwaukee, Wisconsin.

5. That this action is brought against all of the members of said local union No. 5 and the members of said local union No. 47 and against the agents, employees and representatives of said local No. 5 and local union No. 47, and this suit is brought against the said locals in their own names and against Charles Schreiber and Herbert Sebastian as officers and representatives of all of the members of said locals, their agents, employees and representatives, for the reason that it is impracticable to join the individual members of said local unions because of their large numbers.

6. That the plaintiff, for approximately four years, and at the time of the commencement of this action, conducted the business of a tile contractor at 3162 N. First Street, in the City of Milwaukee; that he also rents a show room at 4738 W. Lisbon Avenue, in the City of Milwaukee, wherein he has on display samples of tile; that the plaintiff has heretofore employed one or two tile layers and one or two helpers, depending on the amount of work he has con-
[fol. 90] tracted to do at a given time; that the plaintiff, in fulfilling his contracts for the setting of tile, works with the tools of the trade as a tile layer and tile layers helper; that the plaintiff, in his business as contractor, also takes subcontracts for the installation of tile in homes or buildings requiring that kind of installation.

7. That none of the employees of the plaintiff were at the time of the commencement of this action members of either of said defendant unions; that no contractual relation of any kind exists between the plaintiff and the defendant unions; that the defendant unions have not been designated by any of the plaintiff's employees as their agent for collective bargaining or for any other purpose.

8. That between March 14, 1935, and December 6th, 1935, the plaintiff and the business agents and representatives of the defendant unions have had discussions and conferences respecting the "unionizing" of plaintiff's business; that the defendants sought to have plaintiff "unionize" his business; that in connection with the discussions aforereferred to, the defendants submitted to plaintiff an agreement, Exhibit —, setting forth the terms and conditions for the operation and maintenance of a union shop, which agreement is substantially identical in form with those entered into between the defendants and other contractors in the city of Milwaukee whose businesses are unionized.

9. That the plaintiff refused to sign such agreement unless there was stricken from said agreement Article III, which reads as follows:

"It is definitely understood that no individual, member of a partnership or corporation engaged in the Tile Contracting Business shall work with the tools or act as Helper, but that the installation of all materials claimed by the party of the second part listed under the caption "Classification of Tile Work" in this agreement shall be done by

journeymen members of Tile Layers Protective Union Local No. 5."

[fol. 91] that plaintiff was willing to agree to the other terms and conditions of the agreement; that Article III was a condition contained in contracts in all shops which were unionized; that defendants were unable to eliminate Article III from the contract without discriminating against other unionized shops; that defendants would not agree to eliminate Article III from the agreement tendered the plaintiff; that plaintiff would not agree to operate his business in compliance with the agreement with the inclusion therein of Article III.

10. That because of the foregoing refusal the defendants caused the premises at 3162 N. First Street, Milwaukee, Wisconsin, to be picketed and patrolled, said pickets carrying banners with the inscription thereon that the plaintiff is "unfair to organized labor"; that they caused the plaintiff's automobile to be followed from his place of business to the jobs where he worked, for the purpose of discovering where the plaintiff and his men were performing tile work so that plaintiff's jobs might be picketed and patrolled by the defendants.

11. That some months ago a letter was directed by the defendants to architects and contractors requesting them not to patronize the plaintiff because he was conducting a non-union shop, and stating that if they did so patronize the plaintiff they would be picketed; that although such letter was sent, no actual picketing of any architect or contractor was had and no steps were taken to do the things set forth in the letter.

12. That the agreement entered into by the defendants with other tile contractors in the city and county of Milwaukee is a collective agreement governing wages, hours and working conditions for their members who are journeymen and journeymen helpers recognized as craftsmen [fol. 92] in accordance with the Constitution of the defendant organizations. (Said Constitution is Exhibit —).

13. That all contractors who have entered into such agreement with the defendant unions are classed by the defendants as union contractors, and that all contractors who have refused to enter into said agreement are classed by the defendant unions as non-union contractors.

14. That by virtue of the agreement between the defendant unions and the union contractors, the defendant unions and their members secure advantages in wages, hours and working conditions in maintaining a standard of wages and working conditions satisfactory to the defendants and their membership; that the wages paid to the defendants and their members by union contractors have for some time been higher than the wages paid by the plaintiff to his employees.

15. That the tile industry for some years last past has been in a demoralized state because of a lack of building operations; that the defendants and their members have been in competition with non-union tile setters and helpers in their effort to secure work as a means of livelihood; that for the purpose of enhancing the interests of the defendants and their members, the defendants and their members have found it necessary for the protection of their individual rights in the prosecution of their trade, to require of all employers agreeing to conduct a union shop to agree: "That no individual, members of a co-partnership or corporation engaged in the tile contracting business, shall work with the tools or act as helper, but that the installation of all materials within the classification of tile work shall be done by journeymen members of the Tile Layers Protective Union."

16. That the plaintiff, by virtue of his status of an employer and contractor, is not entitled to membership in the defendant unions that the Constitution and Rules of the [fol. 93] defendant unions require among other things that a tile setter shall be a journeyman tile setter who shall have acquired his practical experience by virtue of an apprenticeship, and that such apprenticeship shall, among other things, consist of service as an apprentice of not less than three years; that the plaintiff has not served an apprenticeship as a tile setter in accordance with the rules of the defendant unions.

17. That the picketing has been peaceful, without violence, and without any unlawful acts.

18. That the defendants, by their counsel, have stated in open court that they will not pursue the automobile of the plaintiff from his place of business to his jobs; that they will refrain from sending any further letters to architects

or contractors, and will not indulge in any acts or conduct referred to in said letters towards said contractors and architects.

And, I find, as

CONCLUSIONS OF LAW.

1. That a labor dispute exists between the plaintiff and the defendants respecting the unionizing of plaintiff's business on the terms proposed by the defendants; that the plaintiff and defendants are parties to said dispute, and that such dispute is within the definition of a labor dispute as defined in the Labor Code, Sections 268.18 to 268.29, and subsections thereof, of the Wisconsin Statutes.

2. That it is not unlawful for the defendants, in furtherance of said dispute, to advise, notify or persuade, without fraud, violence or threat thereof, any person or persons, of the existence of said labor dispute; that it is not unlawful for the defendants to give publicity to, and obtain or communicate information regarding the existence of the facts [fol. 94] involved in such dispute whether by advertising, speaking, or patrolling any public street or any place where any person or persons may lawfully be, providing said acts are done without intimidation or coercion and without fraud, violence, breach of the peace, or threat thereof.

3. That the defendants have not indulged in violence or fraud; that because of their statement made by their counsel in open court and in their presence, that they will not send any more letters to owners, contractors, or architects as hereinbefore referred to, and will not indulge in any of the acts or conduct referred to in said letters, the Court concludes that no unlawful acts will be committed or will be executed or continued.

4. That the agreement submitted by the defendants to the plaintiff, setting forth terms and conditions prevailing in that portion of the industry which is unionized, is sought by the defendants for the purpose of promoting their welfare and enhancing their own interests in their trade and craft as workers in the industry.

5. That Article III of said agreement is a reasonable and lawful rule adopted by the defendants out of the necessities of the employment within the industry and for the protection of themselves as workers and craftsmen in the industry.

6. That the plaintiff is not entitled to the relief prayed for in his complaint.

7. That the above entitled action be dismissed on its merits without costs.

Dated, this 20th day of March, 1936.

By the Court.

Otto H. Breidenbach, Circuit Judge.

[fol. 95] [File endorsement omitted]

IN CIRCUIT COURT OF MILWAUKEE COUNTY

148674

PAUL SENN, Plaintiff,

vs.

TILE LAYERS PROTECTIVE UNION, LOCAL NO. 5, CHARLES SCHREIBER, Tile Layers Helpers Union, Local No. 47 and Herbert Sebastian, Defendants

JUDGMENT—Filed April 3, 1936

The above entitled action being a request for a temporary injunction, but by stipulation of the parties the action having been tried upon its merits on the 13th, 14th, 15th and 16th days of January, 1936, before the Hon. Otto H. Breidenbach, Circuit Judge, Lamfrom, Tighe, Engelhard & Peck, by Leon B. Lamfrom and A. J. Engelhard, appearing for the plaintiff, and Joseph A. Padway appearing for the defendants, and a full trial having been had, and the Court having heard arguments of counsel and having made and filed its findings of fact and conclusions of law from which it appears that the plaintiff is not entitled to an injunction,

Now, Therefore, on motion of Joseph A. Padway, attorney for defendants,

It is ordered and adjudged that the relief prayed for by the plaintiff be and hereby is denied, and that the complaint [fol. 96] of the plaintiff be and hereby is dismissed on its merits without costs.

Dated, this 3 day of April, 1936.

By the Court.

Jas. L. McCormack, Clerk, by Harold H. Gruttner, Deputy Clerk.

Judgment entered this 3 day of April, 1936, at 2:50 P. M.

Jas. L. McCormack, Clerk, by Harold H. Gruttner, Deputy Clerk.

[fol. 97] In Circuit Court of Milwaukee County

Case No. 148674

Paul Senn, Plaintiff,

vs.

Tile Layers Protective Union, Local No. 5, Charles Schreiber, Tile Layers Helpers Union, Local No. 47, and Herbert Sebastian, Defendants

Bill of Exceptions

Be it Remembered, that this action being at issue and on the calendar was brought to trial at the October, 1935 term of said court and on the 13th day of January, 1936, before that branch presided over by the Hon. Otto H. Breidenbach, Circuit Judge, presiding, in equity, the plaintiff appearing by Lamfrom, Tighe, Engelhard & Peck, his attorneys, and the defendants appearing by Joseph A. Padway, their attorney; plaintiff's counsel stated the facts and issues in the case and then defendants' counsel likewise stated the facts and issues in the case, and then the following testimony was taken and the following proceedings were had:

[fol. 98] [Title omitted]

Testimony Taken and Proceedings Had Before Honorable Otto H. Breidenbach, Judge Presiding

Case started January 13, 1936 at 11:00 A. M.

Appearances

Messrs. Lamfrom, Tighe, Engelhard & Peck, Represented by Leon B. Lamfrom, and A. J. Engelhard, Attorneys for plaintiff.

Joseph A. Padway, Esquire, Attorney for Defendants.

[fol. 99] Opening statement made by Mr. Engelhard for plaintiff.

Opening statement made by Mr. Padway for defendants.
Statement made by Mr. Lamfrom.

The Court: We will adjourn to 2 o'clock this afternoon.

Luncheon recess had.

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2 P. M. Same appearances. Trial resumed.

CHARLES SCHREIBER, defendant, sworn, testifies adversely in behalf of plaintiff, as follows:

Examination by Mr. Engelhard:

Q. Mr. Schreiber, you are one of the defendants in this suit?

A. Yes.

Q. Will you speak up loud so we can hear you?

A. Yes, sir.

Q. You are the business agent of the defendant, Tile Layers Protective Union, Local No. 5?

A. Yes.

Q. Now, the Local No. 5, when I speak of that, I mean your union?

A. Yes, sir.

Q. Has about forty members today?

A. Forty-one, to be exact.

[fol. 100] Q. Now, have you a copy of the contract which was drawn up and which was signed by a number of tile contractors who do business in the city of Milwaukee?

A. Yes, I did have, but I gave it to Mr. Padway. He has it in his brief.

Q. (Continued.) A correct copy. Will you mark this as Plaintiff's Exhibit 1.

Copy of contract marked Plaintiff's Exhibit 1 for identification.

Q. I ask you Mr. Schreiber, whether Plaintiff's Exhibit No. 1 is an exact copy of the copy of the contract, which your counsel produced. You might compare that.

A. Well, yes. It is about.

Q. Mark this Plaintiff's Exhibit 2.

Letter marked Plaintiff's Exhibit 2.

Q. I offer Plaintiff's Exhibit No. 2 in evidence. Do you want to see this, Mr. Padway? I will show you Plaintiff's

Exhibits 1 and 2, and if there is no objection, we will let it go in now to have a connected record. I offer Exhibits 1 and 2 in evidence.

[fol. 101] The Court: Received.

Proposed contract marked Plaintiff's Exhibit No. 1.

Letter dated March 14, 1935, addressed to Paul Senn, by the Union, marked Plaintiff's Exhibit No. 2 in evidence.

Q. For the purpose of the record I will read the letter. "March 14, 1935." This is on the stationery of Local 5, Milwaukee, Affiliated with Brick layers, Mason and Plasterers International Union, and it bears the seal of the local and it is addressed to "Mr. Paul Senn, 3162 N. 1st Street, Milwaukee, Wis. Dear Sir: We herewith present a proposed agreement from the Tile Layers Protective Union Local #5, Wisconsin.

If it is your desire to co-operate with us and comply with the terms of this agreement as proposed we will be pleased to accept your signature and or if you desire to confer with representatives of Tile Layers Protective Union please notify the writer and he will make arrangements to suit your convenience.

Please let us hear from you within the next few days. Sincerely yours, F. D. Melvelle, Sr. Sec'y." Both in typewriting and in handwriting.

I will read into the record Article 3 of the proposed agreement, "It is definitely understood that no individual, member of a partnership or corporation engaged in the tile contracting business shall work with the tools, or act as [fol. 102] helper, but that the installation of all materials claimed by the party of the second part as listed under the caption "Classification of Work" in this agreement, shall be done by journeymen members of Tile Layers Protective Union, Local No. 5."

Q. You took up with Mr. Senn direct negotiations regarding the execution of this contract?

A. I did.

Q. And Mr. Senn—In your discussions with Mr. Senn, which were numerous?

A. Yes, three or four times. Three or four times.

Q. In your discussions with Mr. Senn there was always one point upon which you and he could not get together?

A. Correct.

Q. That point was paragraph 3 of the contract?

A. Yes.

Q. Wasn't that the big thing in the negotiations?

A. Well, the way you put it, you are simply trying to limit me in a way beyond this. Mr. Senn, with paragraph 3 I think got the ruling that a contractor working with the tools of the trade must be a practical tile setter and we felt that Mr. Senn never was a practical tile setter and we, under those conditions, couldn't work for him, or give him union men under those conditions.

Q. The point I am getting at is this. That if Mr. Senn had been willing to sign this contract, except paragraph 3, you would not have accepted it?

A. No, no, we couldn't. We couldn't.

Q. Until he is willing to accept paragraph 3 of the contract there will not be a contract?

A. There will be no contract between Mr. Senn and our union.

[fol. 103] Q. We all know when people are in dispute one makes a demand and the other fellow refuses?

A. Correct.

Q. As long as one makes a demand and the other refuses there is a dispute. You have stated to Mr. Senn in substance "You sign this contract" and he said "I won't". And Mr. Senn said "I will sign the contract if you will eliminate paragraph 3." That is what he said?

A. Well, with the addition—just a moment. With the addition we would take his man into our local as he seen fit. That was something that entered into it too.

[fol. 104] Q. Has Mr. Senn tied up the signing of the contract with the condition you have given to take that man?

A. Yes. He wanted to get his tile layer, Holly, into the organization, with the understanding we take him in and eliminate article 3.

Q. Have you ever said you won't take back Holly?

A. No.

Q. That is a matter still in negotiation. If he signs the contract with paragraph 3 eliminated, whether you take Holly back or not?

A. Oh yes, he wants to keep Holly working for him.

Q. I ask you whether subsequent to that conversation you received Exhibit 4?

A. Yes, I believe I received that letter from Mr. Senn.

Q. I offer these in evidence. I will read them into the record. On the stationery of "Paul Senn & Co., Tile Contractors, 3162 North First Street, July 24, 1935. Tile Layers Protective Union #5, 2904 N. 47th St. Milwaukee, Wis."

A. That is my home address.

Q. "Att. Mr. Chas. Schreiber. Dear Sir: I desire to go on record to the effect that I want to co-operate with the Tile Setters and Helpers Unions to improve conditions in the industry, further I want to confirm my statements which were made to you on July 23rd and 24th, relative to the above.

As you no doubt recall, I stated, that I would be glad [fol. 105] to employ union help on all my jobs, but for certain reasons, to-wit:

As a small contractor I cannot agree to stop working entirely, since my business (due to the length of time I have been in business, etc.) has not reached the proportion whereby I can live off of the labor of the few men I could employ. Then too, I feel it is my right as a contractor to perform any duty in connection with the work, as long as I do not infringe on the rights of union men. I am willing, tho, to agree to employ union setters and union helpers on every job, regardless size, but reserve the right to work with those men, during their working hours.

In reference to Arnold Holly, who has performed his duties satisfactorily during his employment with me, I will render such assistance to him to make it possible for him to become a member of your union.

In the event that we can equitably work this matter out to our mutual advantage, I will furnish you with a list of contracts now on hand, and proposals submitted, with the understanding that I may complete those jobs under the conditions under which they were taken.

I am sure we can reach a satisfactory arrangement in regard to these matters and thereby make a step forward, towards your goal of unionizing the contractors in Milwaukee.

Very truly yours, —— ——." It is unsigned, but you admit you received that letter?

[fol. 106] A. Yes, sir.

Q. Exhibit 4 is a letter, carbon copy of a letter, on the stationery of "Paul Senn & Co. Tile Contracting 3162 North First Street, Milwaukee, Wis. Aug. 8th, 1935.

"Tile Layers' Protective Union #5. 2904 N. 47th Street, Milwaukee, Wis. Attention Mr. Chas. Schreiber. Dear Sir:

"After our conversation this afternoon in which you informed me that the Union would not consider the suggestion in my letter of July 24th, I want to advise you that under the present conditions I cannot enter into an agreement with your Union as the rules now stand.

"Even tho I am one of the smallest contractors in the city I find I cannot compete with most of the contractors who have agreed to employ Union men under the rules dated April 1st, 1935. My facilities for displaying tile, my equipment and other definite charges against each individual job together with the methods I have employed to set tile, as you know, are cut down to the minimum, nevertheless I cannot obtain contracts on a competitive basis with the majority of the contractors who have signed up with you. Invariably their selling price is lower than mine.

"Then too, all the firms who have signed up with you have been in business many years, whereas, I have been in business a comparatively few years and my business has not reached the proportions where I can live off the labor of the few men I could employ.

"In view of the above it seems to me that the stand I [fol. 107] have taken in this matter is one whereby I am coming three-fourths of the way to improve conditions in the industry and am only asking you to come the rest of the way.

"Don't forget my suggestion was not to permit one member of any firm to work, as you formerly ruled in the past, but my suggestion specifically stated that a tile setter and a helper would be used on every job and if a small contractor wanted to he could work with these men.

"As you stated your proposition originally, which was in effect, that you would deal with each firm individually, I want to advise you that I would be willing at any time to sign up with your Union if and when you will give me the considerations I have asked for.

"P. S. I have written to Washington for an opinion on this matter. Very truly yours." Do you know what he meant when he said he wrote to Washington?

A. Yes, sir, he wrote to the International Union.

Q. Did you ever receive a copy of that?

A. I did.

Q. I show you Exhibit 5, Mr. Schreiber, and ask you whether that is a—whether you received a copy of that letter from the International?

A. I just couldn't say that this is the same letter, but I received a copy of Mr. Senn's letter.

Q. And suppose you read sufficient to see whether you received a copy of this.

[fol. 108] A. There is one particular paragraph I remember very distinctly.

Q. I offer this in evidence.

The Court: It may be received.

Q. I will read it into the record, Your Honor. This is on the stationery of "Paul Senn & Co. Tile Contracting. 3162 North First Street, Milwaukee, Wis. Aug. 12th, 1935. Mr. John J. Gleeson, Sec., B. M. & P. I. U. of A., 815 15th St., N. W. Washington, D. C. Dear Sir:

"I would like to get an opinion from you relative an issue involving Union Tile Setters and Contractors in Milwaukee.

"In March, 1935, I received a communication from the [fol. 109] Tile Layers Protective Union, Local #5, Milwaukee, Wis., which stated in effect, that if I desired to cooperate with the union they would be pleased to accept my signature on the enclosed proposed agreement, or if I desired I could confer with the representative of the Union.

"After several conferences with Messrs. Melville and Schreiber, no progress was made because I could not abide by their Art. III, realizing if I did I would be out of business. Further, the Union, up to the present time will not compromise on this matter. Art. III reads as follows:

" 'It is definitely understood that no individual, member of a partnership or corporation engaged in the Tile Contracting Business shall work with the tools or act as Helper but that the installation of all materials claimed by the party of the second part as listed under the caption "Classification of Work" in this agreement, shall be done by journeymen members of Tile Layers Protective Union Local #5.'

"From May 15th, 1934, to May 15th, 1935, the total number of labor hours devoted to tile setting etc. by my company were 1777. This total is divided as follows:

Myself	771
Mechanic	856
Helper	150

"Due to conditions, competition, amount of work available, etc., the margin of profit on each job was and is very small. Now, how can I agree to have all of my work done by the Union, and give up the use of my tools? Assuming [fol. 110] that my volume will be 50% greater for the present year, it would still be impossible to earn my living on this basis inasmuch as the selling price of a tile installation, on a competitive basis, is rarely as high as labor and material plus 20%. All overhead costs to come out of the 20%.

"While the Union formerly permitted one member of a firm to work this provision, I imagine, was abused in slack times because an employer would work with only a helper, or as in my case, a mechanic and I do all the work. Improving conditions in the industry is something that should be worked for by all connected with it, but I do not believe the Union should try to take out American Citizen's right to earn his living away from him. This will only result in establishing of a broker and further demoralizing of standards.

"While I am comparatively new in the industry, in business since 1931, I have had the interests of the industry at heart and would like to work towards improving conditions. I have, by word of mouth and letter told the Union representative that I will be willing to employ a Union helper and a Union setter on every job regardless of size, but that I wanted the right to work with them during their working hours. Further, that the man now employed by me, who formerly belonged to Local #5, would be taken back on the terms stated by the representative.

"Could you advise me what course to pursue in this matter and also has any Local of the International Union the right to discriminate against a small contractor? Naturally [fol. 111] most of the old established firms feel that it is unfair competition for a small contractor to work with the tools, but is it if this small contractor employed Union mechanic and helper on every job and worked with them part of the time?

"I feel, that the present policy is discriminatory to the nth degree, so much so that it seems the small business man is to be run out of business. I am sure that this is not the policy of the International Union, and while there are ways of combating this movement, I feel that the best thing for the industry would be to work out matters of this kind in a fair and equitable manner. Very truly yours." Now, Mr. Schr-iber, have you the constitution of the Bricklayers, Masons and Plasterers' International Union of America?

A. Yes.

Q. I will show you this book and I ask you whether that is the present constitution?

A. That is the present constitution.

Q. Turn to page 86 of that. I will offer in evidence at this time, Mr. Padway, Section 6, on page 86, of the Constitution, which reads as follows:

"Sec: 6. Members of the I. U. shall not accept employment with a contractor who works with the tools of the trade unless said contractor is a practical bricklayer, stonemason, cement mason, plasterer, marble mason, tilesetter, mosaic or terrazzo worker.

This Section shall be inserted in all subordinate unions' by-laws."

[fol. 112] I ask you at this time does that section—is that section included in your local by-laws?

A. Yes.

Q. Now, do you know what Mr. Senn's experience has been in any of these fields.

A. In any of these fields? Of course—(Interrupted).

Q. I am asking you, do you know his experience, or is it just hearsay?

A. I don't know any of his experience, no, sir.

Q. During all of this time he never had a member of your union on the job?

A. Oh yes he did, when he started business he did.

Q. When you started in April?

A. We have negotiated with him for five years, when he started in business.

Q. In this letter that Mr. Melville sent to Mr. Senn, with the enclosed proposed contract?

A. Yes, sir.

Q. You, as a union labor leader, knew that there was a demand on him to sign it?

A. Yes, sir.

Q. He refused to sign it?

A. Yes.

Q. From that time on you or Mr. Melville, or your so-called arbitration board—. Isn't there an arbitration board?

A. Yes.

Q. You from time to time approached Mr. Senn and said [fol. 113] you had better sign on the dotted line?

A. Yes, sir, just about.

Q. He said: "Gentlemen, I cannot do that because I have to earn my living with my own hands". Didn't he say that?

A. He did at times. He said "When my business warrants, as soon as he puts on another man or so he would sign that agreement."

Q. When the 6th of December arrived, that was the day that the picketing commenced?

A. Yes.

Q. What time of the morning did you put pickets there?

A. I should judge 8 o'clock.

Q. How many?

A. Two on the first day.

Q. Later on you increased to four?

A. Yes.

Q. Then reduced to two?

A. Yes, it varied. Not more than four or less than two.

Q. Were there the same men always who were picketing, or did you stagger the picketing?

A. No. I think that most of the time it was the same men on that picket job.

Q. They started at eight and did the picketing on that day.

A. Yes, from eight to about noon and from one to about four, something like that.

Q. Would the same men return the next day, or did you put on new men?

A. No, I think I put on the same men.

Q. From the 6th of December down to the time that this lawsuit started, you say that they were the same four men, or two men?

A. Well, I couldn't answer that truthfully, but I am quite sure it was the same four men.

[fol. 114] Q. You provided these men with a sign?

A. Yes.

Q. Who determined what the wording was?

A. I did.

Q. Do you recall what the wording was on that sign?

[fol. 115] A. One sign, "P. Senn Tile Company is unfair to the Tilelayers Protective Union" and the other sign read "Let the Union tile layer install your tile work".

Q. When the picketing started on the morning of the 6th of December you say you had a conversation with Mr. Senn?

A. Yes.

Q. What was that conversation?

A. Well, he got a little bit peeved. I said that really we had to do it and he put on another man and he was threatening to go into the brokerage business selling tile and anybody wanting tile, he says. He mentioned that it was within the law and we wanted to put a stop to it. He took me into the garage and showed me the title. Furthermore, he showed me what he intended to do, to wreck the tile industry.

Q. You intend to continue picketing?

A. We do.

Q. You intend to picket the work where Mr. Senn is working?

A. We do.

Q. As soon as you find out where he has a job?

A. Yes.

Q. There is no dispute if your men could have found out where Mr. Senn was working they would have picketed those places?

A. Yes.

Q. You knew that they tried to find out?

A. Yes.

Q. They followed him for several blocks but Mr. Senn shook them?

[fol. 116] A. I don't know how far they followed him.

Q. They reported?

A. They didn't say how many blocks or miles, but they merely told me that they followed him and he got away from the garage too early.

Q. It was the intention of the pickets——

A. To find out where the jobs were.

Q. They were instructed to find out?

A. Yes, that was their instruction.

Q. As a matter of fact, every member of the union is instructed to find out where Mr. Senn is doing work?

A. Yes.

Q. As soon as you find out where he is doing the work those places will be picketed?

A. Yes.

Q. You are aware of the fact that in July your union sent out a letter to all of the contractors?

A. Yes.

Q. And the architects?

A. Yes, most of them.

Q. In that letter you notified them that if they did business with any of the contractors who were on the so-called unfair list, you would picket their offices?

A. Correct.

Q. And the place of business where they were doing work?

A. Yes, sir. That was the gist of the letter. Yes, sir.

[fol. 117] Q. The intention being——(interrupted.)

Mr. Padway: The letter will speak for itself.

Q. Lets have the letter. I will use it at this time. Who is A. R. in your organization?

A. There is no A. R. in our organization.

Q. I show you Exhibit 6 and ask you whether that is a copy of the letter sent out?

A. That is the copy, yes, sir.

Q. I will offer it in evidence and read it into the record.

The Court: Received.

Letter dated July 11, 1935, marked Plaintiff's Exhibit No. 6 in evidence.

Q. "Tile Layers' Protective Union Local #5 Milwaukee, Wis. Affiliated with Bricklayers & Plasterers International. July 11, 1935. Dear Sir." I assume, Mr. Schreiber, that would be addressed to a particular individual?

A. It was a form letter merely sent out, we will say, to Tom Jones and the dear sir would cover it.

Q. "Some time ago we presented to each individual tile contractor in the city a copy of our new agreement, in which we specified what constitutes a bona fide contractor and who should install the work.

"Not having heard from some of these so called tile contractors in a given time, we beg of you to contact the list of fair contractors listed below in awarding the tile work in

your building operations. If in two weeks time anyone out-
[fol. 118] side this list is awarded tile work we will then picket such jobs, contractors' or architects' offices, or employ other lawful means to help us in our fight to better the conditions of our trade.

"The firms working in harmony with us are as follows: Butler & Sons Co., Cafmeyer Brothers, U. S. Durner & Co., Midwest Tile Art Co., Milwaukee Tile & Mosaic Co., H. Neidner & Co., Stark Mantel & Tile Co. Hoping you will cooperate with us, we beg to remain Very truly yours, Tile Layers Protective Union No. 5."

Q. The only reason why you have not been able to picket at the premises wherein Mr. Senn is at present installing tile is because you have not been able to locate the premises?

A. We located some jobs but we didn't get up there.

Q. But it is your intention to picket jobs in the future?

A. Yes.

Q. Unless, of course, you are stopped?

A. Yes. Surely.

Q. Now, what would you require of Mr. Senn to do today in order that you give up picketing his home and from picketing the jobs he works on?

A. Sign this agreement.

Q. If he did that you would pull off the pickets?

A. Yes, and furnish him with union men.

Q. He has indicated that he is willing to use union men?

A. That is the charge back we had with Holly. We had to take him in our organization under his conditions. The way he put it to me.

[fol. 119] Q. Unless he agreed to quit work himself with his tools you wouldn't enter into a contract with him?

A. Correct.

Q. Until he does agree to lay down his tools and only employ union men to do the work, he himself is now doing, until that time you intend to use what your attorney called economic pressure?

A. Lawful picketing.

Q. You claim you can lawfully picket him because you claim you have a right to make the claim you do on him?

A. Yes, sir.

Q. There is no dispute between us on that?

A. Yes.

Q. Mr. Schreiber, if Mr. Paul Senn agrees to every article of your proposed contract, except article 3, you will still continue to picket?

A. I don't understand the question.

Q. If he agrees to every article of the ten articles except article 3?

A. Yes, sir.

Q. You will still continue picketing?

A. Yes.

Q. That is all.

Mr. Padway: That is all.

[fol. 120] PAUL SENN, plaintiff, sworn, testifies in his own behalf as follows:

Direct examination.

By Mr. Engelhard:

Q. Mr. Senn, you are the plaintiff in this case?

A. I am.

Q. How old a man are you?

A. Thirty-six.

Q. Have you a family?

A. Yes, sir.

Q. What does it consist of?

A. A wife and four children.

Q. How old are your children?

A. Four, six, ten and twelve.

Q. Where do you live?

A. 3162 North First Street.

Q. Do you own your home?

A. No.

Q. Do you rent it?

A. Yes, sir.

Q. In connection with the place where you are living do you have a little office?

A. Yes, sir.

Q. Where did you have the office?

A. In my dining room.

Q. What does it consist of?

A. A desk and a typewriter.

[fol. 121] Q. Just a corner of the dining room?

A. Yes, sir.

Q. Do you have people come into that office in connection with your business?

A. Sometimes, but not very often.

Q. You have your desk and typewriter convenient for the purpose of writing in your business affairs?

A. Yes, sir.

Q. And also private affairs?

A. Yes.

Q. Do you have a garage on your premises?

A. Yes.

Q. Do you have tools and equipment in your garage?

A. I carry the tools in my garage. I have a truck. Also in a different garage but a separate garage I have the other stock.

Q. By the stock you mean tile?

A. Yes.

Q. Now, you have been doing business under the firm name of Paul Senn & Company?

A. Yes, sir.

Q. You, however, are not a corporation?

A. No.

Q. You are not in membership with anybody else?

A. No.

Q. You are simply doing business under the firm name of Paul Senn & Co.?

[fol. 122] A. Yes.

Q. How long have you been in the tile setting business?

A. About the middle of 1930 is when I started working at the trade.

Q. Where is that?

A. At Miami, Florida.

Q. Prior to that time what was your trade or profession?

A. How far back do you want to go?

Q. Lets go back to see what experience you have had in connection with the building industry.

A. We will have to go back to the time I left school. I took up engineering work and was an engineer—(Interrupted)

Q. What year was that you left school?

A. 1916.

Q. What school did you leave?

A. The County Agricultural College.

Q. Was that work above the high school grade?

A. That was supposed to be a preparatory school for Madison.

Q. How much education do you have? Did you pass the eighth grade?

A. Yes.

Q. Did you go through high school?

A. I didn't finish high school. I think I left in the third year.

Q. Then you went to the Milwaukee County Agricultural School?

A. Yes.

Q. How long did you attend that school?

A. About a year.

Q. How old were you then?

[fol. 123] A. Seventeen.

Q. And then in—in 1916, when you left that school, you went into what business?

A. I took up engineering work, electrical and civil. I took up a correspondence course and also at the University Extension at Milwaukee.

Q. How long did you do that kind of self education?

A. Approximately two years when the company I was employed with transferred me to their New York office.

Q. Did you go to New York?

A. Yes.

Q. Was that about in 1918?

A. Yes.

Q. How long did you stay there?

A. Until approximately 1921.

Q. What kind of work did you do in New York?

A. I was in charge of sales service in the particular department that I was employed in which had—my duties were to install equipment in steel mills and gas plants throughout the United States, everything east of Pittsburgh.

Q. Electrical equipment?

A. Well, it consisted of electrical work, piping big thirty, forty and sixty inch mains.

Q. In 1921 where did you go after you left New York?

A. I came back to my home town Milwaukee and was

employed by the Milwaukee Gas Light Company as industrial engineer.

Q. How long did you work for that company?

[fol. 124] A. Approximately three years.

Q. That would take you down to 1924?

A. Yes.

Q. And then what did you do?

A. I then went in the real estate field in Miami. I moved to Florida because of my wife's health.

Q. You stayed down there about six years?

A. No, for one year during the boom.

Q. 1924 and '25?

A. Yes.

Q. Then what did you do? What did you do down there?

A. Real estate business. And I did some building down there.

Q. When you say you did some building, do you mean as a contractor?

A. Yes.

Q. Did you use your own tools? Did you work with your hands as contractor down there?

A. Yes.

Q. What kind of work did you do?

A. I built three houses.

Q. What particular trade did you work at while building the houses?

A. I did everything I could in connection with that work.

Q. With your own hands?

A. Yes.

Q. Some time in '25 you came back to Milwaukee with your wife?

A. Yes.

Q. She had sufficiently recovered?

[fol. 125] A. No, but I came back.

Q. Then what did you engage in?

A. Plastering business, as contractor.

Q. Did you do plastering with your own hands and tools?

A. Yes.

Q. For how many years from 1925 did you do plastering?

A. Until about the middle of 1930.

Q. A period of about five years?

A. Yes.

Q. How many men did you employ as a plastering contractor?

A. When I first started, two and myself, and during the peak in 1928 and '29 I had as high as thirty working for me.

Q. Did you do any of the work with your own hands and tools when you had thirty working for you?

A. No. It was a physical impossibility.

Q. You took care of the contractors?

A. Yes.

Q. When did you return to Florida?

A. Middle of 1930.

Q. What was the occasion?

A. The condition of the health of my family.

Q. When you went down there——

A. It was a case of earning a living and I had decided to go in the tile business some time previous to that. So I hired out as a day laborer for a tile contractor down there.

Q. For how long a period did you do tile work in Florida?

[fol. 126] A. I should say about nine or ten months. It wasn't quite a year.

Q. In that connection you set tile?

A. Yes.

Q. You also worked as a helper and as a tile setter?

Mr. Padway: Objected to as leading.

Q. Tell us what you did?

A. It was not more than one week after I was employed by this contractor down there that they put me at the actual setting of tile and my duties as helper were delegated to somebody else.

Q. For how many months did you work in Florida as a tile setter?

A. Approximately eight months I would say.

Q. When, in 1930, if it was in '30, did you return to Milwaukee?

A. I think it was the 23rd of December.

Q. 1930?

A. Yes.

Q. What did you do when you came back to Milwaukee?

A. I went down to see some of my friends I had doing business with.

Mr. Padway: How long were you in Florida in 1930?

A. Approximately eight or nine months.

Q. Now then, you are back here in Milwaukee on the 23rd of December, 1930?

A. Yes.

Q. What did you do?

A. I went to see some of the people I had been doing business with as a plastering contractor and asked them whether or not I could figure tile work together with the plastering, which I had been doing formerly. I went out soliciting con- [fol. 127] tracts as a plasterer and tile, to do the plastering and tile work in a residence for a specific sum of money.

Q. As a contractor?

A. Yes.

Q. As principal contractor or subcontractor?

A. Yes. Dependant I solicited from an architect or general contractor.

Q. Can you recall your first job, 1931?

A. Yes, I can. Cumberland Forest Heights.

Q. Were you general contractor, or subcontractor?

A. Subcontractor. I had about four plasterers and helpers in connection with the plastering and I employed one union tile setter. I believe that during that job, which took several weeks, I think that my brother worked for me two or three days at setting tile.

Q. And did you on that job, did you do any work yourself?

A. Oh yes.

Q. What type of work did you do?

A. Everything I possibly could to save time. Setting tile, mixing mud, carrying mud. Stuck pieces of cap on the wall. Everything to make the tile worker as easy as I could. I did personally set some tile as much as I could, but not much.

Q. Tile setting in a residence is usually done in connection with the bathroom?

A. Yes.

Q. Any other parts of the house?

A. Vestibule. Fireplace hearth. Kitchen walls and sinks. Mantels. Sunroom floors and in one or two instances in my business I have put in tile floors in every room of the house.

[fol. 128] Q. Then, commencing either in the latter part of '31 and down through the years 1932, '33, '34 and '35, you have been devoting your time exclusively to tile contracting?

A. I have.

Q. What has been the largest number of men working for you since you have been in the tile setting business?

A. Four and myself working for two and a half days. That is the largest number I have had working for me.

Q. What is your usual crew?

A. A man and a helper. That has been for the last six or eight months of 1935. Prior to that I think I didn't have a helper but roughly about one-fifth of the time. The rest of the time I did the work with one man.

Q. That is, prior to the latter part of 1935, as I understand it, eighty per cent of the work of the helper was done by you?

A. Yes.

Q. And you employed a mechanic?

A. Yes.

Q. You mean by that a tile setter?

A. Yes.

Q. The tile setter does not do all of the work necessary in order to set tile in a bath room?

A. No, sir.

[fol. 129] Q. He merely does the actual setting?

A. Yes. Those are his duties.

Q. He cuts the tile?

A. No, as a rule the helper cuts the tile.

Q. He does the mechanics of putting the tile in place?

A. Yes, sir. The helper brings him all of the materials he requires and makes cuts and makes it as easy as he can.

Q. Is it correct to say since you have been in the tile setting business, with the exception of 1935, you have never had more than one man working for you, except twenty per cent of the time you had a helper helping the mechanic?

A. I had another man working on the job. Not necessarily helping the mechanic. It might not be twenty per cent of the time, but closer ten per cent.

Q. During that period of time, down to the present, you have been doing all kinds of work yourself on any of these tile setting contracts?

A. Yes.

Q. You would set tile?

A. Yes.

Q. Mix cement?

A. Yes.

Q. Do the work of a helper and tile setter?

A. Yes.

Q. During the year 1935 you made about how much money net?

A. 1935?

[fol. 130] Q. Yes.

Mr. Padway: Objected to as incompetent, irrelevant and immaterial.

The Court: He may answer.

Exception.

A. About $1500.00.

Q. And how much of that $1500.00 is net?

Mr. Padway: I don't want to repeat these objections so may it be understood that my objection pertains to this line of examination.

The Court: Yes.

Q. How much of that 1500.00 net that you made during 1935 do you attribute directly to your own labor?

A. About half.

Q. About $750.00?

A. Yes.

Q. How much have you invested in your business as a tile contractor?

A. Roughly it would be between 7 and $850.00. I don't know just what my inventory is.

Q. You have stated in your complaint you have invested approximately $700.00 in tools, equipment and supplies?

A. Yes.

Q. Will you tell us what your tools are?

A. Mortar box, shovels, pails, a truck, straight edges, the tools of the trade. Of course, in that $750.00 I also included an estimate of my inventory.

[fol. 131] Q. Your inventory is the most expensive part of your investment?

A. Yes.

Q. What does your inventory consist of other than tile?

A. That is about all.

Q. You have a display room for your tile?

A. Yes.

Q. Where.

A. 4738 Lisbon Avenue.

Q. Do you rent that display room?

A. Yes.

Q. How much rent?

A. $15.00.

Q. In that you have a display of various colors and designs of tile?

A. Yes.

Q. Now, what is your annual overhead in connection with your business, fixed overhead? I don't mean the wages you pay. But just the fixed overhead charges, such as rent, telephone, heat, operation of motor vehicles and other expenditures.

A. I have not computed it for the year 1935, but offhand I would say it is around 8 or $900.00 a year.

Q. I notice in your complaint you stated about $600.00. Did you, since you signed the complaint, have occasion to look into that?

A. I mulled it over in my mind and I had forgotten certain items which should be included in overhead.

Q. $15.00 a month for the rent of the show room?

A. Yes.

Q. Expense of operating the automobiles?

A. Yes.

Q. That is an essential part of your business?

A. Yes.

[fol. 132] Q. You haul your tile in your automobile to the job?

A. I have a truck but I don't use it all of the time. I need the car also.

Q. You have telephone expense?

A. Yes.

Q. Heat?

A. Yes, sir. Three garages.

Q. What is that?

A. Three garages.

Q. You use three garages?

A. Yes.

Q. Two for the automobiles?

A. Yes, sir.

Q. And one for tools?

A. For stock.

Q. You didn't carry your stock in the display room?

A. Oh no.

Q. You merely have your samples there?

A. Yes, sir.

Q. Have you any other income other than the income you get from the tile business?

A. No.

Q. Work done by your own hands?

A. Yes.

Q. In 1935 you have stated the income was one-half due to your own labor and one-half due to the contracting end?

[fol. 133] A. Yes.

Q. The business is highly competitive?

A. Very much so.

Q. You and Arnold Holly together, whoever was necessary, pitched in and did the work?

A. We did. The way we worked it I would do all of the helper's work and he would devote his time setting tile. I found out I had at least two or three, or sometimes four hours a day, I could devote to setting tile.

Q. And when that time came you pitched in and set tile?

A. Yes.

Q. I understand from your previous testimony, Mr. Senn, that your testimony testifies this, that out of $1500.00 approximately $1500.00 net, you made in 1935, about $750.00 of that you would have been required to pay to somebody else had you employed somebody else to do the work you did yourself?

A. Yes.

Q. The other $750.00 you made, you contribute to your contracting?

A. Yes.

Q. You devoted considerable time in getting new contracts in '35?

A. Yes.

Q. Can you state approximately how many contracts you performed in 1935?

A. Oh, in the neighborhood of forty.

[fol. 134] Q. Forty?

A. Yes.

Q. What is the average amount of one of those contracts?

A. They vary in size, some as low as $25.00 and the largest I had was about $1000.00.

Q. Out of these forty contracts you had during 1935, were most of those as subcontractor or as principal contractor?

A. I would say about eighty per cent were subcontracts and the balance the principal contractor.

Q. Now then, since you have been in the business of tile contractor you say you have not had anybody employed who was a member of this Union, Tile Layers' No. 5?

A. In 1935 I had a union helper working for me for a few months, but nobody from the Tile Setters Union.

Q. That is, Local No. 5?

A. I did not have anybody working from there.

Q. They supply merely the tile setters?

A. Yes.

Q. That is called mechanics?

A. May I ask the full time I was in business, or in 1935?

Q. From 1931, as a tile contractor in the city of Milwaukee?

A. The first man I employed was a member of the Tile Layers Union.

Q. That was in 1931?

A. Yes.

Q. What happened to him?

A. While we were working on the job the business agent came on the job and told me I couldn't work and I told him [fol. 135] I was going to continue to work. A short time later my man told me he had been fined at the union because he worked with me, and asked me what to do about it. I says: "There is nothing to be done about it. That is entirely up to you." He said he was going to continue to work for me and he did work for me until he got a job in a brewery. Since that time I have not employed any one from the Tile Setters' Union.

Q. Now, did you employ any member of the other union, other defendant union, the Tile Layers' Union No. 47?

A. Yes, I did. In 1934 I had a man working for me for approximately three months.

Q. What happened to him?

A. I believe that he just got other employment when my work dropped off.

Q. He was laid off by you and he was employed some place else?

A. Yes.

Q. During the year 1935, you employed no one who was a member of either of the two defendant unions?

A. No.

Q. And your present employees are not members of either one of these two unions?

A. No.

Q. Now, in April, or rather in March 1935, were—did you receive a communication from the Tile Layers' Protective Union Local No. 5?

A. I did.

[fol. 136] Q. I show you Plaintiff's Exhibit 2 and I ask you whether that is the communication which you received?

A. Yes.

Q. What was included with Exhibit 2?

A. The proposed contract.

Q. I show you Plaintiff's Exhibit No. 1 and I ask you whether that is the proposed contract?

A. Yes.

Q. Has the Union, since that time, ever offered any other proposed contract other than Exhibit No. 1 for you to sign?

A. In writing?

Q. In writing?

A. No.

Q. Now, have you had any correspondence with the union since the receipt of the letter dated March 14, which is Exhibit 2?

A. After each, what I considered each important conference with Mr. Schreiber I confirmed my statements to him in a letter to him.

Q. Did you have any conferences with Mr. Melville prior to the time you had conferences with Mr. Schreiber?

A. Yes.

Q. I show you Exhibit 3 and ask you whether or not that is a carbon copy of a letter you sent to Mr. Schreiber?

A. It is.

Q. Likewise I show you Exhibit 5 and I ask you whether or not that is a carbon copy of a letter you sent to Mr. Schreiber?

A. It is.

[fol. 137] Q. I show you 5 and ask you whether or not that is a carbon copy of a letter you sent to the International?

A. It is.

Q. When I say International, I am now referring to the International Union known as the—known as the Brick

Layers', Masons & Plasterers International Union of America?

A. Yes.

Q. Did you receive a reply from the International?

A. I did not.

Q. Did you ever receive any information from Mr. Schreiber to the effect that the International had received this letter from you?

A. I did not.

Q. To this moment you didn't know whether or not the letter had been received by the International?

A. No.

Q. When did you first learn that it had been received?

A. I didn't learn that it had been received, other than the fact that it had not been delivered back through the United States Government mails.

Q. You heard Mr. Schreiber testify about that he had received a copy of the letter?

A. Yes, I did.

Q. When you received Exhibits 1 and 2 what did you do?

A. I called Mr. Melville on the phone and started to discuss article 3 with him and he at the time suggested we get together and talk this matter over and he came over to my house and we had a conference that lasted about half [fol. 138] an hour I would say.

Q. What was the substance of the conversation you and Mr. Melville had at that time?

A. I expressed my willingness to work in accord with the Union on all provisions with the exception of article 3 and I think—I am not positive about that—but if my memory serves me well, the outcome of that conference was that I was to get all of the other small contractors in the field at my show room and also further discuss this matter and Mr. Melville then came up with some of the other members of the arbitration board and there were some eight or nine contractors in my same position and most of them voiced the opinion that they would be willing to employ union help if the union—(Interrupted)

Mr. Padway: Was this conversation had in the presence of any of the union officials?

A. Mr. Melville was there, Mr. Sutton and I believe Mr. O'Neill of the Butler Tile Company. He is a member of

the arbitration board, as I understand. Mr. Weiller I believe was there. There were three or four members there. We couldn't come to an agreement.

Q. On what?

A. In regard to article 3. Most of them, I think it was almost unanimous, most of the small contractors said they would be glad to play with the union, but they could not give up the use of their tools and that was about the end of the meeting.

Q. By that they meant they would not give up the right [fol. 139] to work themselves with the union men?

A. Yes.

Q. How did you happen to call him?

A. Shortly after they sent their letters out to the contractors and architects saying they would picket the jobs. After I received copies of those letters from the people I did business with I called Mr. Schreiber.

Q. That is how you happened to get his name?

A. Being in the industry I don't know how I got his name, but I knew that Mr. Schreiber was the business agent.

Q. Then you contacted him?

A. Yes, sir.

Q. And referring now to Exhibit, which is your letter of July 24th, does that indicate whether it was your conversation on July 23rd and 24th—does it indicate that was your [fol. 140] first contact with Mr. Schreiber, or had you contacted him before the 23rd of July?

A. I believe that was the first time I contacted Mr. Schreiber.

Q. I show you Plaintiff's Exhibit No. 6 and ask you whether that is the letter sent out to the contractors you did business with?

A. Yes.

Q. And you got a copy of that?

A. Yes.

Q. That is the one in which they threatened to picket the architects and contractors office?

A. Yes.

Q. What was your conversation with Mr. Schreiber on the 23rd of July?

A. The sum and substance of it was that I asked him as one man to another as to whether or not my proposition wasn't fair. Why shouldn't a small contractor work with

his tools if he is employing union help. We discussed this thing at great length. He began to see things my way. He says: "I think your proposition is fair. Especially as you indicate you will have a tile setter and helper and you will only work with the helper and mechanic. Of course, it is up to the arbitration board." Then we discussed two other features in regard to signing it. I asked if he didn't think it was fair for me to complete work I had then contracted for. He says: "Yes." He said: "I will permit you to complete the work you had submitted proposals on." There is quite a lapse of time between the time we submit a proposal. We don't know whether we get a contract for [fol. 141] thirty or sixty days. He was willing to include jobs in the process of negotiation. Then we also discussed Mr. Holly the man working for me now for about two and a half years. I brought out the point that the man was a former union man and a good mechanic. He had worked for me and his services were satisfactory. I couldn't find anything wrong with him and I also felt one of the main reasons he was not in the union was due to the fact that he had to support his family. He couldn't find work with the union so he took it outside of the union.

Q. In other words, Mr. Senn, at this time you are willing to sign this contract, except for article 3?

A. Yes.

Q. You are willing to take any member of the union to work for you? That is up to the union who shall work for you?

A. I wouldn't go that far. The man that the union gives me will have to be a competent mechanic.

Q. Well, you understand, of course, that the union would [fol. 142] only furnish you with competent mechanics?

A. Mr. Schreiber and I discussed that point. Any man that the union would send to me who would not prove competent he would send me another.

Q. Upon you notifying the union?

A. That is it.

Q. And you would pay the union scale?

A. Yes.

Q. And maintain union hours?

A. Yes.

Q. In other words, you would comply with every provision of that contract?

A. Yes.

Q. Except article 3?

A. Yes.

Q. You are ready and willing to do that now?

A. Yes.

Q. And you are able to do it?

A. Yes.

Q. Did you tell Mr. Schreiber that you were willing to do that at all times in your conferences?

A. At all times my position was very clearly stated, I would be willing to sign that union agreement provided article 3 would be changed so I could work.

Q. What you have told us so far is up to and including the 24th of July, the day on which you wrote that letter, which is Exhibit 3?

[fol. 143] A. Exhibit 3.

Q. Now then, did you have—is that correct?

A. Yes, sir.

Q. That conversation you have been testifying to was a conversation just prior to July 24th?

A. Yes, sir.

Q. I notice you wrote Exhibit 4 on the 8th of August. Did you have a conference with Mr. Schreiber between the 24th of July and the 8th of August?

A. I did.

Q. Will you tell us what occurred at that conference?

A. Mr. Schreiber reported to me that the union just couldn't change their agreement; that they had made contracts with eight or nine firms in the city and that those contracts were going to run, I think a period of one year, and they didn't see any need for changing that contract for the benefit of a small contractor, I or anybody else; that was the contract they wanted signed.

Q. What was said, if at all, in the event that you didn't sign up by the unions?

A. Well, nothing definite. Just vague threats "we will have to go after the boys." That was about all. No definite threats were made.

Q. During those conversations you had with Mr. Schreiber, the feeling between you and Mr. Schreiber was good?

A. Yes, I would say so.

[fol. 144] Mr. Padway: I would ask that the word threat be stricken.

The Court: Strike it.

Q. Don't characterize what was said by saying threats.

A. By Mr. Schreiber. He said: "Paul, we will have to step on the boys. We will have to go after them. That is all there is to it. We will use everything that the law will permit us to use." He charged that no violence would be committed and everything would be handled in accordance with the law.

Q. Nothing happened to you after that conference between the 24th of July and the 8th of August?

A. Nothing further that I can remember.

Q. Then you wrote letter under date of August 8th, which is Exhibit 4?

A. Yes, sir.

Q. Now, after you wrote that letter did you have a reply to it?

A. No.

Q. Did you have any further conversation with Mr. Schreiber?

A. I think so. Mr. Schreiber's duties carried him around the city and he stopped in on several of the jobs where I was working and we passed a pleasant ten or fifteen minutes discussing the conditions in the industry.

Q. Was there any further conversation between you and Mr. Schreiber regarding your signing up the contract?

A. Yes. We always said "lets see if we cannot do something" and I always took the same stand. "Charlie, I couldn't do anything. I cannot sign my death warrant. As soon as I sign the contract as it stands I am out of busi- [fol. 145] ness". I always took the same stand. There was no ill feeling with Mr. Schreiber. Finally he tried to intimidate me, or coerce me.

Q. Did you have any conference with anybody else subsequent to the 8th of August than with Mr. Schreiber? When I say any one else, anybody else connected with those unions.

A. I have referred to that meeting we had with the arbitration board.

Q. When was that meeting?

A. That, I think, was in March.

Q. Did you have any further meetings with the arbitration board prior to the 6th of December when the picketing commenced?

A. I don't recall.

Q. Well, prior to the 6th of December did you have any conference with Mr. Schreiber in the month of November?

A. Yes, sir, yes.

Q. Where was that conference?

A. I was working on a job, 68th north of Center, and Mr. Schreiber came into the building.

Q. Will you tell us what the conversation was at that time?

A. The first thing Mr. Schreiber noticed was that I had additional men working there. More than I had formerly employed. And he shook his head. "Oh, this is getting terrible, Paul." I says: "What did you expect me to do, turn down the business when it comes in?" He says: "We ought to get together on this thing." "Well," I says, "my proposition still stands." He said: "Well, I will tell you what you do. You get the small men together," small con- [fol. 146] tractors he was referring to. "Lets see if we cannot work out something with the majority of them." I think if we get a bunch of those fellows together why maybe we can amend article 3 so it is possible for you to sign the contract." The stand I took, I says "Charlie, why should I do your organization. I am not going to my competitors and ask them to do anything. I will paddle my own canoe and they can paddle theirs." We discussed several other things, nothing of great importance and that was the end of the conversation.

Q. Well now, did you see Mr. Schreiber at any other time between that conversation and the morning when picketing commenced?

A. I don't believe so.

Q. When did picketing commence at your home?

A. December 6th.

Q. What time did you first notice picketing at your home?

A. I was out making some calls soliciting business, or making collections, I don't remember, when I was called to the phone and it was my wife and she told me that the pickets were in front of my home. As soon as I concluded my business I drove home and Mr. Schreiber was there with two pickets.

Q. Did you have a conversation with Mr. Schreiber at that time?

A. Yes.

Q. What was your conversation?

A. It was something like this—I don't remember word for word.

Q. Give us the substance of it.

A. He says: "I am sorry we have to do this, Paul. You [fol. 147] know you are growing too fast. When you put on Max Eiler on 68th Street, that was the last straw. We could not permit that." I says: "Well, you fellows are all of age and you know what you are doing, if you think you can get by with this, go ahead." He said: "Well, we are going to keep it up and we will picket the jobs. We will have to do it until the boys get in line." Then I made a threat. I said: "I had had considerable stock of tile on hand. Since the industry was controlled by a big dealers so a small man starting in business couldn't purchase, I made the assertion I had devoted four or five years of my life to the tile industry and I felt that I wanted to continue to earn my living in that industry and if I was going to be forced out as contractor I would enter the brokerage business, I would sell tile to any tile setter who wanted to purchase that tile. To bear out my words I showed him my stock of materials."

Q. You had that in your garage?

A. Yes, sir. He said: "I am sorry you are taking this stand. If you go through with this it will demoralize the industry." I said: "I didn't want to go through with this, but if I am forced to take a step like this in order to earn my living in my chosen profession I will have to. I know the business. I have devoted the five hardest years of my life to it and I intend to continue."

[fol. 148] Q. Now, Mr. Senn, you had some jobs to perform on the 6th of December and thereafter?

A. Yes.

Q. Will you describe what occurred when you would leave your place, your residence, with either your passenger automobile or with your truck?

A. Well, after picketing started on one particular morning I noticed a car standing at the curb with two men in it and when I came out of the alley with my truck why they started to follow me and I immediately surmised those were the pickets. I recognized the car that stood across from my home and I recognized the pickets. I said to myself, they wanted to follow me and I eluded them.

Q. How far did you go before you eluded them?

A. They chased me six or seven times. Sometimes I had to go as much as two miles and sometimes I got rid of them in the first thirty seconds of the chase. It depends on the [fol. 149] trickery we resorted to and whether they could outguess me.

Q. Did they ever get to any place?

A. Not to my knowledge.

Q. What was the longest chase they gave you?

A. About two miles.

Q. How did you elude them?

A. I took streets where they had stop lights and gauged my speed when I came to the crossing, the yellow or change light was on so I could still go through but anybody following would be stuck by the stop light. Then, of course, I made the first turn after that and it was comparatively easy to get away from them.

Q. Do you recall the Sunday of the 22nd of December?

A. Yes, sir.

Q. Will you tell us what happened on that day?

A. Because of the fact that I was being followed I didn't use my truck very often because it is a 1924 Buick and is not very fast. It hasn't much of a get away. I used my car. When I completed a job, of course, I couldn't move all of my equipment in the car, so I decided I would go and move my equipment on a Sunday and I was chased for several miles that Sunday with my truck.

Q. With your what?

A. With my truck.

Q. How did you elude them?

A. I finally made a quick turn and got in the alley behind [fol. 150] that Standard filling station and stood still while they drove past and I lost them.

Q. Did you ever talk to any of the pickets?

A. No.

Q. Did they ever talk to you?

A. No.

Q. You are not making any claims that the pickets were in any way violent while they were picketing your home?

A. Absolutely not.

Q. You live in the corner house?

A. Yes.

Q. When there are four pickets present do they picket both sides of the house?

A. I really never paid much attention to them. Sometimes I noticed when I get home from work or in the house they are walking arm in arm. But sometimes—(Interrupted)

Q. That is, when there are two or four?

A. I was never present when there were four. My wife told me there were four.

Q. What was on the signs?

A. P. Senn Tile Company unfair. Have the union tile setter set your tile.

Q. What Mr. Schreiber said?

A. Yes.

[fol. 151] Q. Now then, picketing of your residence, Mr. Senn, has that been daily, or only on work days?

A. Systematically only on work days.

Q. Has your house ever been picketed on Sundays?

A. No.

Q. On Saturdays?

A. Yes, sir.

Q. Has there been any picketing lately.

A. Last week we had two and a half days of it.

Q. Between the time you appeared in court on the 30th of December and the 7th of January was there any picketing?

A. I don't believe so.

Q. I believe that is all. Cross examine.

Cross-examination.

By Mr. Padway:

Q. Now, you are familiar with the tile setting trade, aren't you?

A. I think I am.

Q. You know that is classed in the building trade as a skilled craft?

A. I think it is.

Q. You know that the building trades put the tile setting trade with the brick layers, masons and plasterers, that [fol. 152] they put the tile division in with those crafts?

A. Yes.

Q. Now, you know too that there is a difference in the tile setting craft between what is known as helper and journeyman?

A. Yes, there is.

Q. You know that a helper is not permitted to do a journeyman's work?

A. I think that is the union rules.

Q. You know that a helper is only permitted to do the work of mixing and carrying of mortar, unpack tile, cutting off the tile and washing and grounding of it?

A. Did you include cutting the tile, Mr. Padway?

Q. Yes, I did.

A. Yes. Yes.

Q. You know that is the helper's work?

A. Yes.

Q. The setting, actual setting of tile is confined to what is known as journeyman tile setter?

A. Yes.

Q. You have been in the plastering game?

A. Yes.

Q. In the building game?

A. Yes.

Q. You know that all of the skilled crafts in the building trades have rules that provide for journeymen and helpers?

A. Yes.

Q. The trade itself, independent of union rules, do employ what is known as apprentices and journeymen and helper?

A. I don't believe the trade. I think it is with the union that the man serves his time.

[fol. 153] Q. You know that the law in the building trades, Florida and Wisconsin, have got and recognize a distinction between master craftsman and journeyman and apprentices?

A. I believe so. I don't know.

Q. You know that the plumbing craft is in the building trades?

A. Yes, sir.

Q. You have worked on houses and buildings, haven't you?

A. Surely.

Q. And so you have seen plumbing work going into the buildings?

A. Yes.

Q. * * * I am going to read to you from the constitution, which is applicable to your business, the tile business.

"All apprentices should attend a technical night school [fol. 154] for one year during their term of apprenticeship or take up a home-study course which shall have been approved by the Executive Board." Do you believe that to be unreasonable?

Mr. Engelhard: Objected to as incompetent, irrelevant and immaterial.

Q. I intend to prove in this case, if the Court please, that this Union has certain laws and rules that govern a practical mechanic. There are certain people known as master craftsmen and journeymen. The Union recognizes a master craftsman and will permit one to work along with the trade. It will not recognize a skilled craftsman, any one who has been, as in this case, eight months to set up as a master craftsman.

Arguments of counsel now made to Court.

Mr. Engelhard: How long have you been a plasterer?
A. Six years in the plastering business.

Arguments of counsel to Court continued.

The Court: How is skill or qualification material under the clause in the contract?

Mr. Padway: For this reason: That is not the only thing that binds the Union. The contract is not the only reason why we cannot take him in as a Union contractor. That is one reason why we cannot take him in. We cannot take him into the Union because he is not a skilled craftsman. That is the second reason, because of our constitution, that [fol. 155] was told him. That was testified to by Mr. Schreiber. The third reason is that he insisted we take in Mr. Holly. Mr. Holly will not be taken into the Union. He is virtually a suspended man.

The Court: I understand, Mr. Senn, has now waived that condition.

Mr. Padway: We won't take him in because he is not a skilled mechanic. Here is the constitution which is as binding as the contract. That rule was made for the purpose of protection.

Arguments of counsel continued to Court.

The Court: Are you going to set up an answer to show that the reason for your picketing is that he has worked

as a helper regardless of any refusal to sign this contract, that he is working as a helper with his man. Is that what you intend to set up, that the picketing did not grow out of the fact that he refused to sign the contract?

Mr. Padway: Both. He must abstain from working as a tile setter.

The Court: Whether he signs the contract or not?

Mr. Padway: Whether he signs the contract or not. Then, if he wants to be recognized as a Union shop he can go on working, he will have to sign that contract because it [fol. 156] provides he will pay such and such a wage; he will recognize such and such working conditions and he will recognize all of the provisions in there. But in this instance we refused. It is not a question of whether we permit him to work. He can work all he pleases, or operate a non-union shop. He has a right to operate a non-union shop. I want to make that as clear and emphatic as I can. It is his legal and definite privilege to operate a non-union shop. That is his legal and absolute right to pay ten cents an hour if he can get them. But it is our right again, the union right, to endeavor to secure from him a union contract, or have him run a union shop. And he can refuse to do it, but we will bring economic pressure to make him do it. We have a right to say you shall pay a dollar and twenty-five cents an hour for the craft.

Mr. Engelhard: We admit that. He says he will pay it.

Mr. Padway: He is willing to do everything we ask of him but the one thing, I won't abstain, or promise to abstain from working with the tools of the trade at tile setting.

Mr. Engelhard: Has he a legal right to do that?

Mr. Padway: Have we a legal right to set up certain rules. One is contained in the contract there because of the demoralized condition of the trade, the union decides it [fol. 157] does not want a contractor, whether he be skilled in the trade or unskilled, to work with the tools of the trade with the men because there is not enough work to go around. We have rule No. 2 in the constitution. If the Court should come to the conclusion we cannot do that, we maintain that the Court cannot, we still say that our people cannot work with him. He wants to run a union shop. He promises to do so. If the Court says "I have held that you cannot prevent him from working with the tools. You cannot have your pickets there. We say he can-

not run a union shop, because we do not recognize him as a skilled craftsman. In other words, we don't consider him a poor apprentice. We don't consider him a half-baked helper. We say we are not going to permit you, according to our rules, to work there.

The Court: Mr. Padway, this discussion arises in connection with the offer of proof. Does the constitution become by implication a part of this contract?

Mr. Padway: The constitution becomes this. The constitution becomes a rule of the union under which——(Interrupted.)

The Court: Does this contract provide that all provisions of the constitution become part of the contract?

[fol. 158] Mr. Padway: No. But the union cannot make a contract contrary to the rules. If the union made a contract in contravention of the constitution it would be expelled by the International.

The Court: Does the constitution permit a skilled journeyman to work with his employes?

Mr. Padway: "Members of the I. U. shall not accept employment with a contractor who works with the tools of the trade unless said contractor is a practical bricklayer, stonemason, cement mason, plasterer, marble mason, tile-setter, mosaic or terrazzo worker."

The Court: Practical workman, does that mean a journeyman?

Mr. Padway: Yes. We have the rules here as to who are journeymen and so on.

[fol. 159] Mr. Engelhard: We will stipulate he has never had the apprenticeship as prescribed by the union. We will stipulate that the three year apprenticeship, which the union requires of apprentices has not been had by Mr. Senn.

The Court: That is all Mr. Padway is seeking to show.

Mr. Padway: Will you stipulate too that the requirements of the union in connection with the attendance on a technical high school during that apprenticeship, or taking up a home study course, which is approved, has not been complied with?

Mr. Engelhard: We will stipulate that as a tile layer he has never gone to night school.

Cross-examination.

By Mr. Padway:

[fol. 160] Q. Now, have you ever had an agreement, either orally or in writing, with the tile setters union as long as you have been in the business to operate a union shop?

A. Did I ever have an agreement with the union, oral or written?

Q. Yes.

A. No.

Q. You have had conferences or discussions with representatives of the union for some years, haven't you, about your shop?

A. They didn't go through the period of years. It was the first year and then several years elapsed and then 1935 I had many conferences.

Q. Did you employ Mr. Nicolai?

A. Yes.

Q. Was he a member of the union?

A. He was.

Q. Did you pay him union wages?

A. I did.

Q. Who else did you employ besides Mr. Nicolai?

A. On that job? The first job?

Q. Any job after that.

A. Approximately one day out of a week, or possibly two days out of a week, I employed my brother to work with me.

Q. He worked with you?

A. Yes.

Q. Is he a union man?

A. He is not.

Q. Has he ever been a union man?

[fol. 161] A. Years back he was a union man.

Q. He was a union tile layer?

A. Not a union tile layer. My brother is not capable of working steadily. His health was ruined due to the war. He is on a pension and I use him as a helper out and also to help me out.

Q. You used him as a helper in your tile laying business?

A. Approximately ten per cent of the time.

[fol. 162] Q. Whom did you employ besides Mr. Nicolai?

A. Mr. Nicolai worked for me for several months I think it was and then Mr. William R. Neidner entered into a

partnership arrangement with me as a partner in the tile contracting business. Mr. Neidner worked with me for a period of four or five months and the partnership broke up.

Q. Was Mr. Neidner a member of the union?

A. I understood he gave up his card when he entered in the tile contracting business.

Q. Who else did you employ?

A. After the partnership was dissolved between Mr. Neidner and I I employed Arnold Holly.

Q. You knew that Arnold Holly had been a member of the union?

A. I did.

Q. When he came to work for you what did you know about it then?

A. I knew that Mr. Holly had had some trouble with one of the union shops with regard to a matter of wages. That he left the employment of that contractor and went to work for a contractor in my same position. In other words, one of the independent contractors not in the down town ring. He had been working for that contractor. I heard he worked for him a week or two. I don't know how long it was. I investigated, I talked to people I knew and found out he was a skilled mechanic. When I arrived at his home and asked whether he was working, he said, "No, he was on the county for some time" and I offered him employment and he accepted it.

[fol. 163] Q. Now, coming back to Mr. Nicolai, you knew that Mr. Nicolai had been fined by the union the sum of $10 for working for you?

A. I did.

Q. You knew that the fine was imposed because he had violated union rules in working for a non-union confractor?

A. I did.

[fol. 164] A. As I understood at that time, a union layer could work on the job with a non-union contractor, but the bone of contention in Nicolai's trouble was, in this case, the union tile layer was working with the non-union contractor who was acting as the journeymen helper. Referring to myself. On that basis I was under the impression Mr. Nicolai was fined.

Q. What is exactly what happened.

A. That was my understanding of it.

Q. He told the truth. You were acting as helper to the journeymen, weren't you?

A. Yes, sir.

[fol. 165] Q. You have worked on Sundays?

A. I did.

Q. You know that that is contrary to union rules, unless there is an emergency?

Mr. Engelhard: Do you take the position here that Mr. Holly and Mr. Senn were in any relationship with the union when they worked on Sunday?

Q. No.

Mr. Engelhard: Objected to as immaterial.

The Court: He may answer.

Exception.

A. I do.

Q. You have also worked longer hours than those recognized by the union as a standard day?

A. On occasions. It is not a general practice by any means.

Mr. Engelhard: And when you did that you were under no contract with the union?

A. I was not.

[fol. 166] Q. You have had pointed out to you in the last year—I mean 1935—by union representatives that—well, the conditions and terms prevailing in the union respecting their craft?

A. You mean with regard to hours?

Q. With regard to wages paid, hours of work, conditions respecting overtime, Sundays and holidays?

A. Not all of them. I knew——(Interrupted.)

Mr. Engelhard: We submit, Your Honor, that the contract proposed to Mr. Senn speaks for itself and shows what wages were and hours and all other conditions he would agree to that.

The Court: Was he familiar with the provisions before he received the contract?

Q. Yes.

A. Before that? They had changed before that and since. Somehow I always found out what the union ruling was.

Q. Now, you told this union, did you not, that you would sign the contract if they deleted paragraph 3?

A. I did.

Q. Then they told you that they couldn't and wouldn't delete paragraph 3?

A. My first real conference with Mr. Schreiber on the subject left me in the state of mind that we would get together on the matter, but Mr. Schreiber left me with the thought in mind. He says: "I think your proposition is fair, but I must take it up with the arbitration committee or board."

[fol. 167] Q. You knew, did you not, that this contract had been entered into with a number of concerns in the city?

A. I did.

Q. Did you send that letter through the mails to various people in this country?

A. I think I sent ten of those letters out.

Q. And the letter reads as follows: "Gentlemen: Would you be interested in purchasing wall and floor tile fixtures from jobber at the same price that tile dealer pays for tile and then employ mechanics to set this material. A show room could be maintained and ample stock kept on hand to satisfy your requirements. If there are enough contractors in Milwaukee County to take a chance on this service it could be started. An early reply would be appreciated. Very truly yours, Paul Senn."

A. Yes, sir.

Q. Did you cause to be inserted in the papers blind advertisements entitled tile setters?

A. I did.

Q. And do you recall when it was that you caused this ad to be inserted in the paper?

A. It was the first Sunday after I was picketed. I don't recall the date.

Q. And this ad reads "Tile setters. Do you want to go in the tile business? Do you want to buy white or colored wall or floor tile trim, or fixtures? Direct them a complete job. Write T 16 Journal?"

A. I did.

[fol. 168] A. * * * The letters and advertisements were also put in the paper and through the mails after the picketing had started.

Q. Well, the purpose of putting the ad in there and sending this through the mails was to sell this tile to persons who would buy it and you would assist in securing the mechanics who would lay it?

A. I had several plans in mind.

Q. That was one of them?

A. That was one of them, yes.

Q. Of course, that means you would put in competition craftsmen or employes with craftsmen and members of the union?

A. Naturally that would be the trend.

[fol. 169] Q. When you came to this city and started in the tile contracting business you paid your employes less than the union scale?

A. I did not. I paid the union scale.

Q. All of the time?

A. I paid the union scale for approximately four weeks.

Q. That is a long time.

A. Shall I recite just what happened after that?

Q. No. Let me bring out the facts as I put the questions [fol. 170] to you and your lawyers will bring out anything.

Mr. Engelhard: We may forget. Let him tell the story so we get it in a connected way.

Q. Let me do it my way. You say you paid the union scale for four weeks?

A. It was somewhere around that time. I am not sure.

Q. Now, in the past year, 1935?

A. Yes.

Q. You paid considerbaly less than the union scale to the men you have employed as tile layers?

A. I did.

Q. The scale was a dollar and a quarter for a journeyman?

A. I believe a dollar in the early first half, or three-quarters of a year.

Q. When the scale was a dollar what were you paying your men?

A. Eight–five cents. Wait. The first few months of 1935 I think I paid seventy-five cents. Then as soon as the volume of business increased I increased my employes voluntarily to eighty-five cents.

Q. At that time the union scale was a dollar?

A. It was.

Q. And you were paying seventy-five cents?

A. Yes.

Q. You paid eighty-five. And it was at the same time a dollar and a quarter an hour?

A. It was still a dollar when I paid eight--five cents. I [fol. 171] had no knowledge of the increase of the rate of pay from one dollar to a dollar and a quarter. I don't know whether the union agreement calls for a dollar, or a dollar and a quarter. I don't know when that increase went into effect.

Q. Weren't you interested in familiarizing yourself?

A. The rate of pay paid was increased during 1935. I am not sure when it was increased.

Q. It was increased April 1st, 1935?

A. In accordance with the proposed contract called for that rate of pay, but it was common knowledge in the industry that a dollar and a quarter was not paid at that time.

Q. I thought you didn't have any knowledge of what the prevailing wage was in the industry?

A. I had the knowledge that comes through the channels of the trade, but I was never familiar with the actual rulings of the union.

Q. When you acquired knowledge through the channels of the trade that the rate of pay was anywhere between a dollar and a dollar and a quarter, you were paying eighty-five?

A. I was. At the time I was paying eight--five I was under the impression that the rate was a dollar. Some months later I heard it was increased to a dollar and twelve and a half cents and then I heard it was increased to a dollar and twenty-five cents an hour. But not officially. I heard the dollar and a quarter officially in August.

Q. The fact is, you were paying less than the union scale [fol. 172] at the time that the N. R. A. went into effect?

A. I paid the code wages during the entire duration of the N. R. A.

Q. You raised your wages to meet the code?

A. I did.

Q. At that time the union wages were higher than you were paying at the time that the code went into effect?

A. If I remember correctly, the union rate of pay was a dollar, prior to the N. R. A. and it was a dollar during the N. R. A.

Q. What were you paying prior to the N. R. A.?

A. When I first employed Nicolai I paid seventy. His pay varied, seventy, or seventy to eight--five, depending on the competitive conditions in the industry.

Q. You paid Nicolai sixty-five, do you recall that?

A. Let me figure. Nicolai worked for me for approximately sixty-five cents an hour. Yes.

Q. Now, at that time the union rate was a dollar, wasn't it?

A. It was. Shall I tell you how I arrived at the sixty-five cents?

Q. I will let your lawyers bring that out. I am not interested in what you were paying your employes.

A. It was not an agreement between the working man and myself, it was a case I paid that man union scale for several weeks. Monday he came and said, "Paul, there is not a tile setter getting a dollar an hour. I am returning some money to you." It was entirely unsolicited on my part. "I don't want to bleed you." I had never talked to that man about hours or rates of pay. It was entirely unsolicited. [fol. 173] I know I was working for other shops. They are getting an hour. When they say they put in eight, they put on eight hours and put in twelve or fourteen to meet the requirements to hold their jobs.

Q. I move that everything that the witness was told by his employe, who was getting sixty-five cents an hour, be stricken as hearsay.

The Court: Strike it.

Q. Coming back to what you know, not what the employe told you.

A. Yes.

Q. You know, or did know that the union scale was a dollar?

A. I did.

Q. You were paying your employe sixty-five cents?

A. I did.

Q. Now, since the N. R. A. came into existence you paid the code of one dollar an hour, is that correct?

A. The arrangements under N. R. A. were that all jobs contracted for prior to the enactment of that N. R. A. could be completed on the same terms and bases provided we submitted a list to our N. R. A. authority. Those jobs I had contracted for I submitted a list in accordance with the rules and completed them and as soon as they were completed the N. R. A. scale of wages was paid on every job.

Q. Now, when the code went out of existence you instantly dropped the dollar rate?

A. Not instantly.

Q. Well, how soon after instantly did you do it?

A. Why, I think it was about a month after that the [fol. 174] rate of pay was dropped due to the fact that the conditions in the industry was demoralized, competition was getting keener and keener.

Q. You dropped it?

A. I did.

Q. To what did you drop it?

A. Seventy-five cents.

Q. Is that the rate you are paying now?

A. No. Just now—— (Interrupted.)

Q. What do you pay now?

A. Eighty-five.

Q. What was the rate in union shops when the code went out of existence?

A. One dollar to the best of my information and belief. I am not positive as to that.

Q. By paying the lower rate to your employes—— (Interrupted.)

A. Yes.

Q. You are able to bid for your work at a lower rate than those who pay the union rate. That is right?

A. Yes, sir.

Q. And in securing contracts through that method union contractors are out that work, at least the possibility of securing it on a competitive basis with you?

A. No. That isn't the case. My biggest competitors are men securing contracts from union shops, their bids, or at least their selling price, is invariably lower than mine.

Q. Selling price?

A. Contract price.

[fol. 175] Q. In spite of the fact that they pay the union wages?

A. I don't know what they pay.

Q. You know that to be the fact that they are people with the union rate of wages who enter lower bids than you enter for the same class of work and job?

A. That is very evident when the bids are opened on competition.

Q. In the last four or five years the building industry has been depressed?

A. It has.

Q. There has been very little activity in the building industry during that period of time?

A. Very little.

Q. The fact is that many tile setters have had to resort to other occupations in order to secure employment by which to live?

A. I assume so.

Q. You know that your man Nicolai had to open a popcorn wagon in order to help himself and family to live?

A. He did.

Q. That is the fact, isn't it?

A. Yes.

Q. You knew that some of the craftsmen were on relief?

A. Yes.

Q. You knew too that there is a fair revival in building, particularly residence building at the present time, and for a few months past?

A. In 1935—the year 1935 showed a considerable increase over '34.

[fol. 176] Q. You have stated, I believe, if you have not I want to ask it of you again, that you consider the tile laying business a skilled craft. That is right?

A. Are you asking what I considered qualifications of a man in the business?

Q. Well, what is generally understood in the building line about the particular craft known as tile layer? Is it or is it not considered a skilled craft?

A. There are two different opinions regarding that. The opinion of the established firm is that you must be a skilled craftsman. People paying the bills, contractors and owners, feels if the man is qualified as contract tile layer he is qualified to be in the business.

[fol. 177] Redirect Examination.

By Mr. Engelhard:

Q. Mr. Senn, you have been setting tile or working as a helper with your own tools for the past five and a half years?

A. Yes, sir.

Q. What were some of your biggest jobs? What was the biggest job you have done as a tile setter, in which you did the tile setting exclusively?

A. Well, I usually work with others, but on the biggest job I ever did after Mr. Holly was taken sick and I had to continue alone, whether I wanted to work or not, I put in two bathrooms out of the six we put in the home.

[fol. 178] Q. How much of the seven hundred and fifty hours that you put in yourself was tile setting as distinguished from the work of a helper?

A. Oh, I dare say the way we have been working where Mr. Holly made his own cuts and did little things where a helper ordinarily would help him, I would say between fifty or sixty per cent was devoted to the setting of tile. More than half.

Q. More than half of the seven hundred and fifty hours?

A. Yes, sir.

Q. Do you know of any job which you got as a contractor upon which you did not set tile during 1935?

A. There may have been one. I went out of the city for a few weeks and left Mr. Holly and another man working. I don't recall.

Q. Do you recall any job upon which you did any work at all that you didn't do work as a tile setter?

A. No—may I have that question again.

Q. (Question read.)

A. I do not.

[fol. 179] Q. I understand your testimony to be that you indicated to Mr. Schreiber and another member of the union who conferred with you about the contract that you had no objection to paying the union wage and maintaining union hours?

A. That is correct.

Q. To maintain and carry out all parts of that agreement except article 3?

A. Correct.

Q. You are ready, willing and able to do that today?

A. I am.

Q. All you want is the right to work with your tools and your hands?

A. Yes.

Recross-examination.

By Mr. Padway:

Q. This is the letter. We will have it marked. "Milwaukee, August 23rd, 35. Secretary J. J. Gleeson. Dear Sir and Brother: In answer to your letter of the 19th inst.,

wish to state that Sec. 6 of Article 20 of the I. U. Constitution covers Mr. Senn's Complaint.

"He was a plastering contractor, a non-union one at that, before entering the tile business.

"He has consistently hired non-union tile setters and acted as helper and slowly broke into the game, and we feel that he either be a tile contractor or go back to plastering. Fraternally yours, Charles Schreiber, Secretary."

Letter received and marked Defendant's Exhibit No. 1, in evidence.

[fol. 180] Q. Has the union ever said to you that you cannot work at your trade of tile setting?

A. I have been informed on that score repeatedly in connection with the union agreement.

Q. Is this not the fact. The unions said in order to secure a union agreement and have union men work for you you shall not work with the tools of the trade?

A. I don't get clearly your question.

Q. Has any representative of the union, independent of the union agreement, get that?

A. Yes.

Q. Ever said to you, you cannot work with the tools of the trade?

A. Shortly after I wrote the letter to Mr. Gleeson, Mr. Schreiber stopped in on one of my jobs and we started talking about this. He inferred—he said, he didn't think there would ever be a chance of my using the tools. I says: "Why?" "In the eyes of the union you are not a bona fide journeyman tile setter." I says: "Charley, how long must this go on?"

Q. That was in connection with securing a union contract and union men?

A. We discussed that among other things.

Q. Did the union, Mr. Schreiber, or anybody else, Milville, ever say to you that you cannot work with the tools of your trade?

A. Yes. I have been told that by men who were formerly in the unions.

Q. Those men told you this, did they not, that as a union contractor you cannot work with the tools of the trade?

A. The gist of what they told me was. No matter how long I would be in the business, the tile setters union would never recognize me as a tile setter.

[fol. 181] PAUL SENN, plaintiff, recalled in his own behalf, testifies as follows:

Direct examination.

By Mr. Lamfrom:

Q. This contract, Mr. Senn, which was sent to you in March, 1935, by the union.

A. Yes.

Q. Did you approach the union prior to that time and ask them to enter into any contractual relations with you?

A. I did not.

Q. Did you at any time ever ask the union for the right to enter into a contract with them?

A. I did not.

Q. Are you—I think you testified on your direct examination that you are willing to enter into a contract with the union, that contract which is Exhibit 1, if the union does not insist upon having that clause in it in which you would give up the right to work in your own business?

A. I am.

Q. Is that true?

A. Yes, sir.

Q. I think that is all.

[fol. 182] Recross-examination.

By Mr. Padway:

Q. Did you not ask Mr. Melville whether you could secure help on union conditions and union terms?

A. I did.

Q. Did he not tell you if you would agree to enter into a union contract it would supply the help?

A. The contract was never mentioned.

Q. Didn't he tell you if you complied with union rules as prescribed for other contractors you would get the help?

A. Yes, he did.

Q. Did he not thereafter come to see you on some of your jobs and talk to you about a union contract and union help?

A. Yes, he did.

Q. Didn't he come out to one of your jobs on Lake Drive and protest that you were employing Nicolai contrary to union rules?

A. He didn't have a chance to protest.

Q. You drove him off the premises with loud language or oaths?

A. I don't know whether I used oaths or not, but I had the owner's permission to keep everybody connected with the tile industry off that job because some one connected with the tile industry threatened dire results.

[fol. 183] JOHN D. EDWARDS, sworn, testifies in behalf of plaintiff as follows:

Direct examination.

By Mr. Engelhard:

Q. Mr. Edwards, what is your occupation?

A. I am a builder, contractor.

Q. How long have you been in the contracting business?

A. Twelve years.

Q. You came up this noon into the court room here?

A. I did.

[fol. 184] Q. When did you talk to Paul Senn last?

A. I think about three months ago.

Q. You read about this case in the newspaper this morning?

A. Right.

Q. That induced you to come up here and volunteer to testify?

A. That is right.

Q. Did you employ Mr. Senn as a subcontractor?

A. I did, yes.

Q. During what years?

A. 1933 and '34.

Q. And about how many jobs did he do for you?

A. Why, I would say a dozen.

Q. Among those jobs were there any expensive homes?

A. There were several.

Q. Will you mention them?

A. The jobs that were just mentioned. Martin Paulsen job and A. F. Millard job.

Q. Did you observe as to who set the tile on the two jobs?

A. Yes, I did.
Q. And the other gentleman?
A. Yes, sir, Mr. Senn did it mostly.
Q. Anybody else assisting him?
A. Yes.
Q. Now, what was the type of workmanship that Mr. Senn did?
A. I would say it was first class.
Q. These tile jobs were in connection with what parts of the home?
[fol. 185] A. Well, there was all types of tile work. There was wainscotting, sinks, and floors, windowsills.

Cross-examination.

By Mr. Padway:

Q. You say you talked to Mr. Senn the last time at what time?
A. About three months ago.
Q. You read of this case in the paper you say?
A. I did.
Q. What paper?
A. The Chicago Tribune this morning.
Q. Whom did you telephone about coming up here?
A. I didn't telephone to anybody, I came.
Q. At what hour did you come?
A. Oh, about 1:30.
Q. Did you come for the purpose of testifying?
A. No.
Q. What prompted you to come here?
A. Well, I was interested. The article I read this morning indicated to me the intent on the part of the union to refuse a man the right to work himself on the job and I had a personal opinion in connection with that. I never subscribed to that idea and don't now. When I came here I volunteered to testify as to the quality of Mr. Senn's work.
Q. Do you build houses for yourself, or for others?
A. Both.
Q. You knew Mr. Senn was a non-union contractor when you employed him?
A. In the home building business we never paid much attention to whether union or non-union contractors.

[fol. 186] Q. When was the last time you built a home building in this city?

A. I am building three or four of them right now.

Direct examination.

By Mr. Lamfrom:

Q. In your opinion, Mr. Edwards, was Mr. Senn competent to do the tile work for which you engaged him during the period during which he worked for you?

A. Entirely so, yes.

Q. That is all.

CHARLES SCHREIBER, recalled adversely for plaintiff, testifies as follows:

Examination by Mr. Lamfrom:

Q. Mr. Schreiber, what is the present purposes of the union in picketing Mr. Senn at the present time?

A. Our union, or rather the trade of the tile layers for the last two or three years has been so demoralized by the outside fellows cutting into our trade, which don't belong, and even those who do go out contracting, and our union is so developed we have to do something to try to eliminate [fol. 187] that source of supply we will say.

Q. Then the purpose of picketing Senn at the present time is to eliminate what you call a source of supply in the union situation?

A. To sort of in a way, yes. To have him come into the union shop drop his tools and hire union labor to do the work for him.

Q. In order to consummate such a relationship, if you are successful in contravening this petition he would have to sign the contract you sent him?

A. Yes.

Q. Suppose Mr. Senn was willing to sign the contract as you sent him without the third clause?

A. He cannot.

Q. I know that. Let's get that clearly. It covers the laying down of his tools?

A. They are not his tools. That is the argument.

Q. I understand it there.

A. Well, we don't. They are not his tools.

Q. Let-s not have a dispute. Wait until I finish with the question. I will rephrase it.

A. That is better.

Q. Assuming that Mr. Senn would be perfectly willing to sign this contract, which is in evidence here, which the union sent him without clause 3 included in it, would that be satisfactory to the union?

A. No.

[fol. 188] Q. Then the only way that Senn can make peace with this union at the present time is by signing the contract, which you sent him, as it is written?

A. As the other ten or eleven contractors in this town did. Yes, sir.

Q. I am not concerned with the others. But with this contract as it is written. Is that right?

A. Yes.

Q. Well, that is all.

A. That is all.

Q. I told you it wouldn't take but a minute.

The Court: You said they were not his tools.

A. When he struck this town, 1931, he was a plastering contractor. He picked up a little of the trade in Florida. That can help, six months, but the fundamentals he did not know. He took one of our men contrary to our union. We didn't know that. But we have a stringent rule, at no time can a contractor act as helper for the simple reason —to cover a case of this kind, anybody, we have offered in this case, anybody off of the street that the tile business looked pretty good—I don't know what attracted him to the tile industry. This man he took knowing he couldn't work as helper. We went on this particular job and told our man you cannot work with Mr. Senn. He has to be a contractor and you have to do the work and hire a union tile setter. We found those men done this work for him, union helper being boss acted as helper. This man kept on dragging along. When he lets out that Mr. Nicolai he picked up another former member. Neidner. He kept him on. He kept on doing that. That Mr. Holly, I would [fol. 189] say in doing a bathroom he could accomplish it. In the start, 1931, Mr. Senn was not a tile mechanic in our eyes. He never was a tile mechanic. He was a plasterer,

or civil engineer, from the time he left school. He never was a tile layer by trade.

The Court: That is what you mean by that expression, his tools?

A. By our tools. Yes, sir.
Q. That is all.

Mr. Engelhard: Plaintiff rests, Your Honor.

FRANK D. MELVILLE, sworn, testifies in behalf of defendant as follows:

Direct examination.

By Mr. Padway:

Q. I have the answer now, Your Honor.

Answer of defendants now filed.

The Court: Yes, I have it, Mr. Padway.

Q. Mr. Melville, you are the president of the union here, the defendant in this case?
A. I am.
Q. Do you recall when you had your first talk with him?
A. Well, I couldn't give the exact date, but the year was about 1931, I would say.
Q. How long had he been in the city at that time, if you know?
A. How long had I been here?
Q. He, Senn.
A. That I couldn't answer. I don't know.
Q. How did you happen to meet with him at that time?
A. He gave me a call and told me his name and said he was thinking of going into the tile business and wanted to see me.
[fol. 190] Q. Did you go to see him?
A. No, sir, he came to see me.
Q. What did you say to him and he to you?
A. I explained things to him the way we were working. As I recall, as a matter of fact, we had no signed agreement with the employers. It was only a gentleman's

agreement. However, we had them all signed up. I explained it. He agreed to go along. He agreed to hire tile layers and helpers the same as any other employer was getting and I told him he could get men.

Q. He agreed to do that?

A. Yes.

Q. He agreed to work on the same basis as other tile contractors at that time?

A. Yes.

Q. What did you say to Mr. Senn and to Mr. Nicolai?

A. I told Mr. Senn that this fellow was working in violation of one of our rules and was subject to a fine if he continued.

Q. Did you explain the rule to Mr. Senn?

A. Undoubtedly and also to Nicolai the same thing, which he knew, of course, before I notified him.

Q. Did Mr. Senn comply with the rules thereafter and employ a union helper with Mr. Nicolai?

A. No, sir.

Q. Did he continue to employ Mr. Nicolai without a union helper?

[fol. 191] A. Yes, sir.

Q. Was that a violation of the rules?

A. Yes, sir.

Q. Did the union impose a penalty on Mr. Nicolai for that violation?

A. Yes.

Q. What was the penalty imposed on Mr. Nicolai for the violation?

A. How much?

Q. Yes.

A. $10.

Q. Was it ever paid?

A. No, sir.

Q. And did Mr. Nicolai continue on working for Mr. Senn?

A. Yes.

Q. The trade was pretty well depressed from 1931 to 1935?

A. Yes, sir.

Q. 1935 building operations revived somewhat?

A. Yes.

Q. You came and talked to Mr. Senn, didn't you?

A. Yes.

[fol. 192] Q. Did you inform Mr. Senn that other contractors in the city had entered into what is called a union contract?

A. Yes.

Q. And without repeating the names again, Mr. Senn recognized them, those read. Are those the firms operating under a union contract?

A. Yes, sir.

Q. Are those firms—do any of those firms have as members of the firms officers or partners what is known as practical craftsmen?

A. Have any of the practical craftsmen?

Q. Yes.

A. Yes, sir.

Q. Men who have worked as apprentices and journeymen?

A. Yes, sir.

Q. Do any of these firms employ their head men, or officers, or partners as craftsmen in the industry since they signed the contract?

[fol. 193] A. No, sir.

Q. They have agreed not to, have they?

A. Yes.

Q. Now, is there a dearth, or has there been a dearth of work in the industry for the last few years for craftsmen?

A. Very much so, yes.

Q. Now, if an employer is engaged in the industry, has that a tendency to lessen the number of union men who may be employed in the industry?

A. Naturally, yes, sir.

Q. And the purpose of that requirement is, to give more work to the members of your craft?

A. That was our aim, yes, sir.

Q. Now, have you—how long, if you know, has this requirement been part of the constitution and rules of order of the International Union to the effect that the union employe cannot work with a contractor who works with the tools of the trade, who is not a practical craftsman? Have you any idea how long that has been the rule?

A. As far as I recall. I won't speak positive, but I think that was there since we have been affiliated with the Bricklayers & Masons Union. 1918, July.

The Court: You are referring to the provision in the constitution?

A. Yes, sir. He asked me how long that was in the constitution.

Q. Has that rule ever been set aside by your local union?

[fol. 194] A. Not to my knowledge.

Q. You, as an officer of the union, have had several conferences in 1935 with Mr. Senn?

A. Yes.

Q. And he admitted this morning that he was not operating a union shop?

A. Yes.

Q. Right, What has been the feeling on the part of the [fol. 195] union, whether he has endeavored to take union men and employ them?

A. What has been the feeling today, him doing that, not very kindly, of course.

Q. That is a grievance you hold against him?

A. Yes.

Q. You characterize him as an unfair employer?

A. Yes. Right.

Q. If he will sign this agreement what is the attitude of you—of the union with respect to wiping the old past grievances and putting him on the fair classification, has the union proposed to do that?

A. I believe if Mr. Senn would go this afternoon to Brother Schreiber and offer to sign the contract as it stands we will forgive him.

Q. You would condone the past offenses?

A. Absolutely.

Q. If he doesn't do that what is the attitude of the union? Do you maintain to hold on the past?

A. We will do anything, of course, to harass and put things in his way.

Mr. Lamfrom: What do you intend to do?

Q. Harass, do you mean by that, by unlawful means?

A. No.

Q. What you mean is to be specific, you intend to announce to the world that he is a non-union contractor and should not be patronized on that account?

[fol. 196] A. Right.

Q. You intend to picket his place of business, which, in this instance is at his home, so as to bring that information to the world?

A. Yes, sir.

Q. Or anybody who is interested in it?

A. Yes.

Q. If you ascertain where he has jobs to picket those jobs?

A. Yes.

Q. In that way you intend to harass and to bring pressure to bear upon him to become a union contractor?

A. Yes.

Q. So that there be no mistake. You will not put him in the category of a union contractor unless he agrees to lay aside the tools of the trade and not work with them?

A. Right.

Q. And the reason for that is because you do not consider him a skilled craftsman, but because you have exacted that condition free from the other contractors whose names you have mentioned and who have signed that contract?

A. Yes, sir.

Mr. Lamfrom: Exacted?

Q. Aside from the society. You describe that contract?

A. Yes.

Q. You believe that to be highly beneficial to your trade to have the contractor, even though a craftsman, to restrain from work?

[fol. 197] A. It takes men off relief.

Q. Is it part of the union's function to give a skilled craftsman to the trade and public?

A. Absolutely.

Q. You heard Mr. Senn state he would want a competent craftsman?

A. Yes, I did.

Q. I notice that article 3 of your constitution, which sets forth the objects for which you are formed, contains this. "The object of this union is to encourage a higher standard of skill, to cultivate feelings of friendship among the men of our craft, to assist each other to procure employment, to reduce the hours of daily labor, to secure adequate pay for our work, and by legal and proper means, to elevate the legal, moral, intellectual and social conditions of our members."

To you- knowledge does the union fulfill that purpose?

A. Yes, to the best of its ability.

Q. Do you encourage a higher skill among the men?

A. Yes. If there is a question about it, between employe and employer, we have a committee and if it is decided against the man he does it for nothing. In fact, we insist upon it.

Q. How many members have you in your union at this time?

A. Forty-one, I believe, to be exact.

Q. I am speaking now of journeymen.

A. Forty-one.

Q. Do you know how many there are in the helpers' union?

A. I heard the other day. I think it is a little less than [fol. 198] that. Perhaps, thirty-two or thirty-three I was informed.

Q. When the trade is sufficiently busy and the helpers required sufficient skill and knowledge, you take a man from the helpers union into the journeymen?

A. Yes, sir.

Q. You examine him and take him in?

A. Yes, sir.

Q. Now many members did you have in the union in 1929?

A. Well, I think we had something like a hundred and twelve, or thereabouts.

Q. What has been the tendency recently, if you know, of it, of some of your former members to become contractors?

A. Well, a few of them have attempted to go into business. In fact, they have some of them, but they didn't get very far so far. None of them have been able to do very much.

Q. Will it have a detrimental effect on your union if the [fol. 199] men start*ing* quitting and going into the contracting game?

A. Absolutely.

Q. What would be the method of protecting the self interest of the union members in that regard? Perhaps, I don't make myself clear. Is clause three prohibiting the men there, the contractor, from using the tools?

A. Yes, sir.

Q. In other words, they might all might become contractors?

A. Yes, sir.

Q. And no longer members of the union at all?

A. Yes.

Q. Would that tend to bring down the wage standards?

A. Absolutely.

The Court: We will take a short recess.

Afternoon recess had.

Q. Now, did you talk to him about the rule in your constitution that doesn't permit any contractor to work as a helper, regardless of his knowledge in the trade?

A. Yes, sir, he was familiar with that.

Q. What did he say whether he would or wouldn't abide by that rule?

A. He simply stated, as far as I recall, he felt he could assume that right. He, as an employer, would do any part of the business he saw fit.

Q. In other words, he gave you to understand he would not forfeit that right to work as a helper if he saw fit?

A. That is right.

[fol. 200] Redirect examination.

By Mr. Padway:

Q. By the way, what is the cost of a fair set of tools of the trade?

A. Cost?

Q. Yes. If you went out and had to buy a complete set of tools in your trade what expenditure would you have to make?

A. Well, I think -12 or $14 without the container would be a fair price.

Q. You wouldn't need $700?

A Oh no. I will sell mine for $15.

Mr. Engelhard: You don't mean to say he has $750 worth of tools. He has equipment and automobiles.

Q. Pardon me.

Recross-examination.

By Mr. Engelhard:

Q. You stated to Mr. Padway that it was your duty to protect yourselves against unfair contractors by insisting upon this provision in the contract that they do not work themselves, either as tile setters or as helpers?

A. Fair contractor and also the larger ones. It doesn't [fol. 201] make any difference.

Q. It doesn't make any difference whether skilled or unskilled contractor?

A. There are none except the skilled are permitted to work.

Q. Well, your demand which you say, the contract which you say you exacted from the other contractors prevents them from doing any work whatsoever, whether skilled or not?

A. Yes, that is right.

Q. That is, what you are also attempting to exact from Mr. Senn?

A. Yes, treating them all alike.

Q. Unless he signs the contract with that exaction in it you will see that he is run out as a contractor?

A. Or signs other agreement.

Q. You intend to put him out of business if you can?

A. No. I never made such a statement.

Q. You want to harass him, or anybody who does business with him?

A. Yes.

Mr. Padway: There is no such testimony.

Q. You intend to harass the architects who do business with him?

A. That is our original program, yes.

Q. And it is still your program?

A. Yes.

Q. You intend to harass the subcontractor?

A. Yes, sir.

Q. You intend to harass——

A. I suppose any place at all we can get to make it effective.

[fol. 202] Q. To make it effective you want to make—create a condition where he cannot get any more work?

A. It is not our aim.

Q. You don't want people to deal with him?

A. No, we will try—— (Interrupted.)

Q. You want to get the situation where Paul Senn either is not going to be a competitor of your men, or he signs up, isn't that correct?

A. That is our aim to get him to sign it.

Q. In order to effectuate—in order to arrive at that aim you are picketing his home, or any job he may get in the future?

A. That is our aim to get him to sign it. It is not our aim to put him out of business.

Q. But you would not be picketing—— (Interrupted.)

A. We expect that to become effective. We don't care who gets the business as long as we get the employment.

Q. Well, Mr. Melville, you caused a letter to be sent to all of the architects and contractors?

A. Well, I didn't personally. The organization did.

[fol. 203] Q. You know about the letter?

A. Yes.

Q. In which you threatened that you would picket the offices of contractors and offices of architects?

A. I think it was.

Q. It is your intention to do that if Mr. Senn doesn't sign a contract?

A. Perhaps so, and perhaps not. We have not got that far yet.

Q. You have not got that far according to the testimony of Mr. Schreiber because you weren't able to find out what jobs he had.

Mr. Padway: Where is the letter.

Mr. Lamfrom: Here it is. "Tile Layers' Protective Union, Local No. 5, Milwaukee, Wis. Affiliated with Bricklayers and Plasterers International. July 11, 1935. Dear Sir: Some time ago we presented to each individual tile contractor in the city a copy of our new agreement, in which we specified what constitutes a bona fide contractor and who should install the work.

"Not having heard from some of these so called tile contractors in a given time, we beg of you to contact the list of fair contractors listed below in awarding the tile work in your building operations. If in two weeks time anyone outside this list is awarded tile work we will then picket such jobs, contractors' or architects offices, or employ other lawful means to help us in our fight to better the conditions of our trade.

"The firms working in harmony with us are as follows: [fol. 204] Butler & Sons Co., Cafemeyer Brothers, U. S. Durner & Co., Midwest Tile Art Co., Milwaukee Tile & Mosaic Co., H. Neidner & Co., Stark Mantel & Tile Co.

"Hoping you will cooperate with us, we beg to remain Very truly yours, Tile Layers Protective Union No. 5."

Mr. Padway: Show me what architects or what contractors office was picketed?

Mr. Lamfrom: We contend that this letter, which was sent out, is a threat. If Mr. Senn is continued on the unfair list, if he gets any jobs that they will picket the architects and the jobs, and anybody else connected with the matter. We cannot think of anything that is plainer. It is written and sent broadcast.

Q. Mr. Schreiber testified on cross-examination that they would picket the offices of architects and contractors and jobs, when and if they found out where he has a job, and when they found out who the contractors and architects are.

Mr. Lamfrom: It is all in the record. We cannot alter it.

Q. That is all.

[fol. 205] Q. • • • Has the union taken any position, or have you intended to put into effect what is set forth in that letter, that you will picket jobs or contractors offices or architects?

A. The parties in charge of that have power to do as they see fit in as far as the union is concerned.

Q. Has the union taken any position that they would do that?

A. No, not on record as such. I don't think so. I say that the executive board has power. At least they have to do it.

Q. Have they taken any such action?

A. No.

Q. As far as you know does it intend to take any such action?

A. I don't think so.

Mr. Lamfrom: Why did the union write that?

A. They were, perhaps, spelling the big and heavy. I don't know.

Mr. Lamfrom: Who is the big and heavy?

A. I suppose the executive board or business agent. I didn't happen to write that. If I did I would say so.

Q. That is all.

[fol. 206] HERBERT SEBASTIAN, recalled, testifies in behalf of defendant as follows:

Direct examination.

By Mr. Padway:

Q. Are you a member of the helpers union?
A. Yes.
Q. Business agent?
A. Yes.
Q. Are you a helper or tile layer?
A. Helper.
Q. How long have you been a helper?
A. Enough. Well, at least nine years; somewhere around nine years.
Q. You are not a journeyman yet?
A. No, sir.
Q. You have to serve an apprenticeship before you became a journeyman?
A. Yes.
Q. How many years will you have to serve in addition to your years as helper?
A. Three years.
Q. Before you become a journeyman. From what you know of the helping line did you learn enough about the tile business so with the journeyman you could work along and set a piece of wainscoting if permitted to?
A. Well, it all depends on with the helping you learn the idea, but if you come to do the actual work it is all a different story.
Q. If a journeyman let you work along and showed you a few tricks of the trade, do you think you could learn something about it?
[fol. 207] A. You learn as you go along.
Q. And could do it. You could with the journeyman set a piece of wainscoting today?
A. After eight years service I should be able to do a little something.
Q. You don't feel that entitles you to be classified as a practical tile setter?
A. No, sir, absolutely not.
Q. You understand by the union rules you are not supposed to do that work even if you can do it?

A. I am not supposed to do it.
Q. Because it belongs to the journeymen craft?
A. That is right.
Q. Your own rules provide it?
A. Yes, sir.
Q. That is all.

[fol. 208] ARNOLD HOLLY, sworn, testifies in behalf of plaintiff in rebuttal as follows:

Direct examination.

By Mr. Engelhard:

Q. Mr. Holly, you are an employe of Mr. Senn at present?
A. Yes.
Q. During the time you have been working with Mr. Senn, for Mr. Senn, you have been working with him in the setting of tile?
A. Yes, sir.
Q. You would work in one room and he might be working in another room?
A. Sometimes.
Q. And sometimes you worked together in the same room?
A. Together.
Q. You observed what kind of work he was doing during the two and a half years that you have been employed by him?
[fol. 209] A. Yes, sir.
Q. Now, what have you to say as to Mr. Senn's work in any particular of the classifications in which you have been employed by Mr. Senn?
A. Well, I wouldn't say it was any different.
Q. That is, you and he do the same kind of work?
A. Yes, sir.
Q. You have done hearths?
A. Yes.
Q. You have done staircases?
A. Yes.
Q. You have done floors?
A. Yes, sir.
Q. And walls?
A. Yes.
Q. Windowsills?

A. Yes, sir.
Q. Ceiling work?
A. Yes, sir.
Q. Bathroom work?
A. Yes, sir.
Q. Tile sinks?
A. Yes, sir.
Q. Bulkheads?
A. Yes, sir.
Q. Mosaics?
A. Yes, sir.
[fol. 210] Q. Window stools?
A. Yes, sir.
Q. Now, you prepared and set all concrete?
A. Yes, sir.
Q. Or does the helper do that?
A. No, I do.
Q. You do that?
A. Yes, sir.
Q. The brick work or other foundations, or materials that may be required to properly complete that work?
A. Yes, sir.
Q. Setting and putting of all tile?
A. Yes, sir.
Q. Stone and marble?
A. No.
Q. And composition?
A. Composition.
Q. Glass?
A. Not on any occasion I had glass.
Q. Mosaic?
A. Yes.
Q. Mosaic in these days, the design is done on a piece of paper?
A. Yes, sir.
Q. Or other material forming the face hearth or fireplace on a mantel?
A. Yes, sir.
[fol. 211] Q. Or a mantel complete?
A. Yes.
Q. Counters?
A. Yes, sir.

Q. Tile designs of every description?

A. Yes, yes, sir.

Q. You erect and install the same?

A. Yes, sir.

Q. Do you build, shape—did you build, shape and form construction repair fireplace work?

A. Yes, sir.

Q. Whether it was in connection with the mantel hearth, or facing or any?

A. With the mantel.

Q. Ever set any marble?

A. Yes, sir.

Q. Did Mr. Senn do any of these things with you?

A. He did, I would say, over sixty or seventy per cent of those things. I will say the other percentage is very low that you probably do, that the tile worker does.

Q. Can you tell us to what extent Mr. Paul Senn put in tile work in any of the contracts that he performed with your assistance, or without your assistance?

A. He has put in wall tile without my assistance and he [fol. 212] has put in floor tile without my assistance. He has did tile sinks.

Q. How about mantels?

A. Mantels. I cannot say if he worked on a mantel, but he put in hearths without my assistance.

Q. You and he have worked together at the same time?

A. When we put in the mantel, that we have.

Q. What have you to say as to whether or not the work he did as a tile setter was skillfully done, or unskillfully done?

A. He did it as skillfully as a tile setter would do it.

Q. Did he do it as skillfully as you would do it?

A. Yes.

Q. Then—before you worked for Mr. Senn you worked for other contractors?

A. Yes, sir.

Q. Did you work for contractors who had more than one journeyman?

A. Yes.

Q. You observed their work?

A. Yes.

Q. And your own work?

A. Yes.

Q. Would you say from your knowledge of what Mr. Senn has been doing during the last two and a half years as a tile setter that he is a practical tile setter?

A. I would say so.

Q. That is all.

[fol. 213] January 15, 1936, 10 A. M. Trial resumed.

Messrs. Lamfrom & Engelhard in behalf of plaintiff.
Joseph A. Padway in behalf of defendants.

PAUL SENN, recalled in rebuttal.

Direct examination.

By Mr. Engelhard:

Q. You specialize in home work rather than commercial buildings?

A. Yes. In fact, in the last eight months I have not had to solicit any business at all. Every bit of business I did came to me by people who knew of my services, whom I had worked for before, over the telephone. I have not gone into an individual office since May or June and asked them if they had tile work for me to work on. Every bit of the work I have done and some incompleted came to me by people who were familiar with my work and I had done work for. "Paul, I have a job for you to figure. Come on over."

Q. In 1934 you did how many jobs?

A. I have four children in my home and I found out that some of the records are not as complete as I would like to have them. But the records for March and April and August have disappeared entirely. But irrespective of that disappearance I have a record of twenty-six. Going back to August '35, and from my experience of previous months, [fol. 214] of August, that has always been my biggest month. I took three times as much business in August as I do in any other month of the year. I think I can safely say I did not less than forty jobs in 1934.

Q. That is the year you did the work in the home for Martin Paulsen?

A. Yes. That was another one of the homes I had two bathrooms on one floor and Mr. Holly worked on one and I on the other.

Q. You also did work in the home for Mr. Millard?

A. Yes, that was another job where we had several bathrooms on one floor.

Q. In '33 how many jobs did you do?

A. I didn't check back in the records. It was getting pretty late last night. But I think I could conservatively say I did not less than thirty.

Q. And '32?

A. About twenty-five.

Q. And in '31?

A. '31 was the first year. I don't think I did over ten.

Q. So you can say that during the time you have been doing this tile work you have done a hundred and fifty to a hundred and seventy-five jobs?

A. Yes, I could say that.

Q. Out of the one hundred and seventy-five jobs how many would you say were done by you as a principal contractor, where you and the owner got together on the job?

A. I made a statement yesterday I thought I did about a fourth of my work for architects. But in going over my [fol. 215] records I find many thousand dollars I was hired directly by the owner. There was no architect on the job. I dare say forty per cent of the work from owners.

Q. The others is done through subcontract?

A. Yes, subcontracting.

ABRAHAM AUWENEEL, sworn, testifies in behalf of defendant as follows in surrebuttal.

Direct examination.

By Mr. Padway:

Q. What is your trade?

A. Tile layer.

Q. How long have you been a tile layer?

A. Thirty-eight years.

Q. How long have you worked at the trade in this county?

A. Well, about the same amount, excepting two years. Thirty-six years about.

Q. Now, as a tile layer you had occasion to do some of the bigger jobs in this county?

A. Yes, sir.

Q. Do you feel that a man, who worked in house work exclusively with other tile layers for the last five or six years,

can hold himself out as a competent skilled craftsman in the various classes of tile laying required in this county?

A. I would say not if he had no experience.

[fol. 216] Q. Working with other men and laying tile in a household, would you say that the tile work performed in the average household in this county in the last five years would be sufficient to qualify a man in your craft as a craftsman?

A. Do you mean an all around mechanic to do any part of the trade?

Q. Yes.

A. No, I wouldn't.

Q. And are there differences even in the ordinary household jobs that require knowledge and skill in the craft to perform that work?

A. Not in the ordinary housework as it is done today.

Q. Now, having in mind the term, practical tile layer as understood by you as a union man and your unions, is a man a practical tile layer within the union rules and qualifications who entered the business as a contractor and worked on household jobs with journeymen tile layers and in that way acquired his knowledge of laying tiles in residences?

A. Do you mean, do I consider him a practical mechanic to do every branch of the work?

Q. Practical mechanic under union rules.

A. I wouldn't say so.

Mr. Engelhard: You wouldn't?

[fol. 217] A. No.

Q. You wouldn't consider him such?

A. No.

Q. Is a journeyman required to be a practical man?

A. Yes, sir.

Q. Required to do work other than household work?

A. Yes, sir.

Q. Some different work, I mean?

A. Yes, sir.

Q. A contractor who works with the tools he can work any hours?

A. He suits himself.

Q. You have no disciplinary rules over him?

A. No, sir.

Q. He can work twelve or fourteen hours, or Sundays, or whenever he pleases?

[fol. 218] A. Yes.

Q. By doing that he would be depriving your men from employment?

A. Yes, sir.

Mr. Lamfrom: He would be getting work for himself though.

Q. He would be depriving your men of employment?

A. Yes.

Q. The union is opposed to that?

A. Yes.

Q. There has been a dearth of work in the last four or five years?

A. Yes, sir.

Cross-examination.

By Mr. Lamfrom:

Q. What did you say your business was?

A. Tile layer. I am a mechanic.

Q. Are you a contractor?

A. No, sir, I am a mechanic.

Q. For whom do you work?

A. Butler & Sons.

Q. Butler & Son is a contractor who has a contract with the defendant union?

A. Yes, sir.

Q. That is, it is a closed shop?

A. Yes.

Q. Are you a member of the union committee that lays down the policy of the local unions?

[fol. 219] A. Well, I wouldn't say we lay down the policy of the local union. The union lays down its own policy.

ABRAHAM AUWENEEL, recalled.

Direct examination.

By Mr. Padway:

Q. This is the first labor trouble, taking labor in general, the relationship between labor and contractors, this is the first labor trouble you have had, the Senn difficulty?

A. Yes.

Q. Your union has been able to maintain a fair state of wages and standards, at least satisfactory to the unions, that has caused no greater difficulty than a three day walk-out in 1900?

[fol. 220] 2 P. M. Same appearances. Trial resumed.

Arguments to Court made by Mr. Engelhard in behalf of plaintiff.

Trial now adjourned to January 16, 1936.

January 16, 1936, 9:30 A. M. Same appearances. Trial resumed.

Arguments of counsel made to Court.

Luncheon recess had.

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2 P. M. Same appearances. Trial resumed.

STATEMENT

Mr. Padway: If the Court please, I wish to make a statement on the record as counsel for my clients that Exhibit 6, the letter of July 11th, 1935, was sent out to contractors and architects, not very many. I am informed the sum of about ten of them. It was not many. Which gave the list of fair contractors, by fair, I mean, from the union's point of view, or those who operated a union shop. Now, there is a statement in the letter that if the work is awarded, tile work is awarded to contractors, by contractors or architects, that this union would picket such contractors or architects. It adds this phrase "Or employ other lawful means to help us in our fight to better conditions in our trade." Now, the union and its officials, not being lawyers, did not secure [fol. 221] legal advice at that time. If they had, perhaps, they would have been advised that was lawfully legal, but since this letter was written and prior to it there has been no picketing of a contractor's premises and no picketing of an architect, and a decision was rendered by this court on the day that this trial commenced which would infer—which holds, and from which I would infer that the picketing of

an architect's or contractor's office, not the job where Mr. Senn may be working, because that would be picketing Mr. Senn, but as a contractor, to picket those premises may be and probably *is*, under the holding of this court, is illegal. That being so my clients advised of that holding and I state now to the court that I am interpreting that holding to prohibit them from either writing to contractors or to architects, or others, that they will picket them as contractors or as architects in connection with Senn's employment as a tile layer contractor as illegal and that they must not do that. I will state to this court that they won-t do that, unless the Supreme Court, if the Supreme Court is called upon to, hold otherwise. Of course, I am not saying I will not advise my clients, and if I am wrong the Court can take that into consideration—I will advise my clients that it is proper for them to write to architects and con-
[fol. 222] tractors that they are in dispute with Mr. Senn over the subject of unionizing and that they will ask him not to give him contracts. I make that statement so that you gentlemen and the Court knows it. I shall also advise them, unless the Court rules otherwise, that they may picket the premises of Mr. Senn and that if they know where he performs his job, that they may picket the job, with appropriate information to the public on the signs that it is he, Mr. Senn. What their controversy is and who it is and over what it is. I want that understood so that if it be beyond the confines of propriety, the Court may rule upon it. But we will not make any threats or statements to the contractors, or architects, or others, that any punishment will be inflicted upon them for giving work to Mr. Senn. All that will be done will be the pure solicitation of these persons not to give him work.

STATEMENT

Mr. Lamfrom: Without offense to counsel and for the record I object to the reception in the record of any statement on the part of counsel as to what he will advise, or what he advised his clients to do, or what he will promise will be done, as that is not competent or relevant matter in a suit of this kind, where the evidence has all been in and
[fol. 223] where it was perfectly proper and the opportunity

was open if counsel thought that sort of evidence would be of service to him to have introduced it.

The Court: Your statement may stand as part of the record.

Exception by plaintiff.

Arguments of counsel continued to Court.

Case now taken under advisement by Court.

[fol. 224] STATEMENT AS TO ARGUMENTS, ETC.

Upon the close of the testimony and in the arguments of plaintiff's counsel and before the decision of the court, the plaintiff argued, and the questions so argued were considered by the court prior to and in the making of the court's decision in the case, that the following statutes of the Wisconsin Statutes of 1935 were invalid and unconstitutional as applied to this case:

Section 103.56 of the Wisconsin Statutes of 1935 for the reason that the same is invalid and unconstitutional because it violates Sections 1 and 9 of Article I and Section 2 of Article VII of the Wisconsin Constitution and violates Section 1 of Article XIV of the Constitution of the United States, in that any construction of said statute by the court, as applied to this case, so as to deprive the plaintiff of the remedy sought would deprive the plaintiff of life, liberty or property without due process of law and deny to the plaintiff the equal protection of the laws;

Section 103.62 of the Wisconsin Statutes of 1935 for the reason that the same is invalid and unconstitutional because it violates Sections 1 and 9 of Article I and Section 2 of Article VII of the Wisconsin Constitution and violates Section 1 of Article XIV of the Constitution of the United States, in that any construction of said statute by the court, as applied to this case, so as to deprive the plaintiff of the remedy sought would deprive the plaintiff of life, liberty or property without due process of law and deny to the plaintiff the equal protection of the laws.

The court duly considered the arguments on the constitutionality of said statutes and decided that said statutes and each of them were in all respects constitutional and valid, both as to the Constitution of the State of Wisconsin and the Constitution of the United States.

[fol. 225] The plaintiff proposed that the court make the annexed proposed findings of fact and conclusions of law, constituting his decision in this case, and the court refused to make each and all of the said findings of fact and conclusions of law as proposed by the plaintiff and made the findings of fact and conclusions of law which are a part of the record in this case as constituting his decision in the case.

Upon the trial, Plaintiff's Exhibits 1, 2, 3, 4, 5, 6 and 7 and Defendants' Exhibits 1 and 2 were offered and introduced in evidence. Plaintiff's Exhibits 2, 3, 4, 5 and 6 were read into the record and Defendants' Exhibits 1 and 2 were read into the record. Defendants' Exhibit 3 was offered for identification only. All of the said exhibits are enclosed in an envelope attached to this bill of exceptions.

[fol. 226] [File endorsement omitted]

IN CIRCUIT COURT OF MILWAUKEE COUNTY

[Title omitted]

Proposed Findings of Fact and Conclusions of Law—
Filed March 16, 1936

The above entitled action having duly come on for trial, in the above court, in that branch thereof presided over by the Hon. Otto H. Briedenbach, Circuit Judge, issue having been joined on issues of fact for the court, the plaintiff appearing by Lamfrom Tighe Engelhard & Peck, his attorneys, and the defendants appearing by Joseph A. Padway, their attorney, and the evidence having been adduced, and the court having heard the arguments of counsel and having taken the case under advisement, and being well and sufficiently advised in the premises, I, the Judge who heard this case, do hereby make the following Findings of Fact and Conclusions of Law, constituting my decision in this case:

FINDINGS OF FACT

1. That at all times set forth in the complaint the plaintiff was and now is a resident of the City and County of Milwaukee, State of Wisconsin, and that his occupation is that of a tile setter and tile contractor under the firm name of Paul Senn & Co.

2. That the plaintiff has been for approximately four (4) years and at the time of the trial was conducting the business [fol. 227] of a tile contractor from his residence at 3162 North First Street in the City of Milwaukee, and that in connection with his business of tile contractor he had rented and rents a show room at 4738 West Lisbon Avenue, in the City of Milwaukee, wherein he has on display samples of tile. That the plaintiff customarily employs one tile layer and one helper, depending upon the amount of work he has orders for to do at a given time, and that in fulfilling his contracts for the setting of tile, he, himself, works with his tools and hands either as a tile layer or tile layer's helper, applying his skill, knowledge and energy in the same manner as though he were an employee working for someone else instead of being a self-employer.

3. That plaintiff has invested approximately Seven Hundred Dollars ($700.00) in tools, equipment and supplies and that he has an annual overhead expense for rent, telephone, heat, operation of a Ford truck and other incidents, of approximately Six Hundred Dollars ($600.00).

4. That during the year 1935, the plaintiff made a net profit of approximately One Thousand Five Hundred Dollars ($1,500.00) on contracts performed by him and his helpers; that his sole income for the support of himself and his wife and four children is the tile business, as described in these findings; that during the year 1935, the plaintiff worked as a tile setter and helper approximately seven hundred fifty (750) hours, in addition to the time and energy that he put into his business in obtaining contracts and engaging in such business activities as a contractor would engage in who was not a self-employer; that the net income of the plaintiff for the year 1935 of One Thousand Five Hundred Dollars ($1,500.00) reflects approximately Seven Hun- [fol. 228] dred Fifty Dollars ($750.00) which the plaintiff earned by laboring directly with his tools and his own hands in the performance of his contracts.

5. That the plaintiff, in the majority of cases, is a subcontractor to the principal contractor on a job and that as such subcontractor he and his help install the tile in bathrooms of homes or install tile in any buildings requiring that kind of installation.

6. That none of the employees of the plaintiff are members of either of the defendant unions; that no contractual relation of any kind exists between the plaintiff and the defendant unions; that the defendant unions have not been designated by any of plaintiff's employees as their agents for collective bargaining or for any other purpose.

7. That the defendant, Tile Layers Protective Union, Local No. 5, and the defendant, Tile Layers Helpers Union, Local No. 47, are voluntary, unincorporated associations of individuals known as labor unions; that the business of each of said defendant unions is that usually carried on by trade unions.

8. That the defendant, Charles Schreiber, is the business agent of said Tile Layers Protective Union, Local No. 5, and is by occupation a tile setter, and resides at 2904 North 47th Street, Milwaukee, Wisconsin.

9. That the defendant, Herbert Sebastian, is the business agent of said Tile Layers Helpers Union, Local No. 47, and is by occupation a tile layers- helper, and resides at 3800 North 7th Street, Milwaukee, Wisconsin.

10. That between March 14, 1935, and December 6, 1935, the business agent and other representatives of the defend- [fol. 229] ant Tile Layers Protective Union, Local No. 5, demanded of the plaintiff that he enter into a written contract with their union, said Local No. 5, by the terms of which the plaintiff was to employ only members of the union and under such terms and conditions as are commonly known as union wages, hours and working conditions; that in addition to the above terms, the said union, through its representatives, demanded of the plaintiff that he agree to an additional term in said proposed written contract requiring the plaintiff to refrain entirely from engaging in any work as a tile layer or helper in the performance of any of his contracts and that he under no circumstances work with his tools as a tile layer or act as a helper in the installation of any of the materials customarily set or laid by a tile layer and his helpers.

11. That the plaintiff was at all times since March 14, 1935, and at the time of the trial, ready, willing and able to agree to all the terms in said proposed written contract submitted by the defendant union, Local No. 5, to the plaintiff,

and was willing to sign the said contract, provided the provision- which required the plaintiff to desist from engaging personally as a tile setter or as helper were deleted from said contract; that the plaintiff repeatedly informed the representatives of said union, Local No. 5, that he could not and would not agree with the said union not to work at his trade with his tools and with his hands in the performance of contracts which he obtained either as principal contractor or as subcontractor; that the said defendant union, Local No. 5, through its agents, at all times insisted and demanded that the plaintiff sign the contract submitted containing therein the provision requiring the plaintiff to give up his [fol. 230] right to work with his own hands at his own trade.

12. That the provision which plaintiff refused to agree to and which was the cause of his refusal to enter into said contract with the said defendant union, Local No. 5, is as follows:

"It is definitely understood that no individual, member of a partnership or corporation engaged in the Tile Contracting Business shall work with the tools or act as Helper, but that the installation of all materials claimed by the party of the second part listed under the caption "Classification of Tile Work" in this agreement shall be done by journeymen members of Tile Layers Protective Union Local No. 5."

13. That because of the refusal of the plaintiff to enter into said contract with the defendant union, Local No. 5, said refusal being based upon the reasons stated in these findings, and no other, the defendants entered into a conspiracy unlawfully and maliciously to molest, harrass and harm the plaintiff by diverse means so as to force him against his will to accede to the demand that he cease to engage in his trade of tile layer or helper or they would ruin him in his business and trade; that the acts of said conspiracy consisted of the following:

(a) The defendants caused the residence of the plaintiff to be picketed almost daily since December 6, 1935, the number of pickets varying from two to four, the pickets carrying banners upon which was printed in large letters the legend that plaintiff was unfair to organized labor;

(b) The defendants have caused the plaintiff to be pursued upon the streets of the City of Milwaukee by pickets

for the purpose of discovering where plaintiff and his helpers were at any particular time performing the work of installing tile;

[fol. 231] (c) The defendants have threatened to picket the premises of the owners and the offices of contractors and architects who let work to this plaintiff unless this plaintiff accedes to the demands of the defendants that the plaintiff sign the aforesaid contract agreeing thereby to perform no work with his tools and with his hands in the execution of his contracts.

14. That the defendants have threatened to continue such activities, except that at the trial of the case the defendants' counsel stated that the defendants would not picket the offices of contractors and architects who let work to the plaintiff and that in no event would the defendants further engage in any secondary boycott; that there was no sworn testimony on the part of the defendants, however, to this effect.

15. That other than the statement of the defendants' counsel set forth in the above finding, whatever its effect may be, the defendants threaten to continue to picket the home of the plaintiff and to picket the jobs which the plaintiff may have in the future, all for the purpose of continuing to exert pressure and force upon the plaintiff until such time as he will sign said contract with the provision in it requiring plaintiff not to work with his tools and with his own hands when performing his contracts.

16. That as a result of the defendants' conduct, through their agents, employees and members, in picketing the home of the plaintiff, causing it to be bannered with banners to the effect that he was unfair to organized labor when such was not the fact, in pursuing him upon the public high-
[fol. 232] ways, thereby putting him to the trouble of continuously dodging his pursuers in order to conceal from them where he and his helpers were performing their work so as to avoid picketing of the premises at which the plaintiff and his men were at work, the plaintiff has been harrassed, molested and interfered with, to his embarassment, humiliation and potential loss of business.

Conclusions of Law

And I find as Conclusions of Law:

1. That the defendants are wilfully, maliciously and unlawfully engaging, and have been engaging since December 6, 1935, in a concerted action to ruin the plaintiff in his reputation, trade and business, for the sole purpose of forcing the plaintiff, against his will, to agree with the defendants not to work with his tools and his hands in his trade, all in violation of Section 343.681 of the Wisconsin Statutes of 1933.

2. That this is not a case involving or growing out of a labor dispute as defined in Section 268.29 of the Wisconsin Statutes of 1933.

3. That the contract which the defendant union, Local No. 5, demanded that the plaintiff sign, in so far as it contains the provisions set forth in finding of fact No. 12, is illegal and contrary to the public policy of this state, and if the court were not to grant relief against the acts of the defendants against the plaintiff, as set forth in the findings, for the purposes therein set forth, it would be a violation of the Fourteenth Amendment to the Constitution of the United States, which guarantees to every person a fundamental right to work with his own hands at his trade with-
[fol. 233] out unlawful interference and hindrance.

4. That such unlawful demand on the part of the defendant union, Local No. 5, and the refusal of the plaintiff to accede to such unlawful demand, even when coupled with other demands which are legitimate demands of trade unions, to which legitimate demands the plaintiff is willing to accede, cannot constitute a labor dispute under Section 268.29 of the Wisconsin Statutes of 1933.

5. That defendants threaten to continue their illegal and unlawful acts unless restrained by the judgment of this court.

6. That plaintiff has no adequate remedy at law.

7. That the plaintiff is entitled to a judgment permanently enjoining the defendant unions, their members, servants, employees, sympathizers and associates, from picketing or patrolling, singly or in numbers, the home of the

plaintiff at No. 3162 North First Street, in the City of Milwaukee, State of Wisconsin, or wherever the plaintiff may reside hereafter; from picketing or patrolling, singly or in numbers, any premises of the owners where the plaintiff has performed, is performing or will perform any contract for tile setting or other work and labor, either as principal contractor or as subcontractor; from picketing or patrolling the offices of contractors or architects with whom the plaintiff may have or may have had any business dealings; from stating or proclaiming that the plaintiff is unfair to organized labor by reason of any past transaction had between the plaintiff and either of the defendant unions; from in any manner coercing or attempting to coerce the plaintiff not to work with his tools, or with his [fol. 234] hands in the performance of his contracts for the laying of tile; from in any wise attempting to molest, intimidate or coerce the plaintiff or any of the contractors, architects, owners of property or other persons seeking to transact business with the plaintiff; from doing or performing any act whatever which directly or indirectly interferes with the conduct of the plaintiff's business, trade or other pursuits.

Let judgment be entered accordingly.

Dated this — day of ——, 1936.
By the Court.

——, Circuit Judge.

[fols. 235-235a] PLAINTIFF'S EXHIBIT 1

Agreement

This Agreement entered into by and between —— ——, party of the first part and the Tile Layers Protective Union Local No. 5 party of the second part.

Article I

That in consideration of this agreement made this first day of April 1935, which is to remain in full force until April first 1936, unless sooner abrogated by mutual consent of the parties thereto, we do each for ourselves and every individual member of our respective organization pledge our full compliance with all its terms.

Article II

The party of the first part agree to employ members of the party of the second part when ever available and the party of the second part agree to furnish the party of the first part at all times sufficient workmen as may be needed to the full extent of their membership. In the event the party of the second part is unable to furnish workmen, then the party of the first part shall have the right to employ any one until such time as men can be replaced with members of Local #5.

Article III

It is definitely understood that no individual, member of a partnership or corporation engaged in the Tile Contracting Business shall work with the tools or act as Helper but that the installation of all materials claimed by the party of the second part as listed under the caption "Classification of Work" in this agreement, shall be done by journeymen members of Tile Layers Protective Union Local #5.

Article IV

It is fu-ther agreed that the carrying out of any of the provisions contained in the Constitution of the B. M. & P. I. U. of A. will in no way be considered a violation of any part of this agreement.

Article V

The party if the first part agree to pay a minimum wage rate of One Dollar and Twenty-five cents ($1.25) per hour, four days per week i. e., Tuesday, Wednesday, Thursday and Friday and working hours to be between the hours of 8 o'clock A. M. and 5 o'clock P. M. of any working day. Noon hour may be curtailed by members on the job, but not to be less than thirty minutes.

Article VI

All overtime shall be paid at a time and one-half rate, overtime means all time between the hours of 5 o'clock P. M. and 8 o'clock A. M. except where three shifts are employed. Work done on Saturday, Sunday and such legal holidays as recognized by this Union namely New Years

Day, Decoration Day, Fourth of July, Thanksgiving Day and Christmas Day shall be paid at a double rate.
[fols. 235-b–235-c] When holidays fall on Sunday the following day shall be recognized as such. No work to be done on Labor Day.

Article VII

All members of the party of the second part must be paid weekly either by check through the mail, or on the job on or before 4:30 o'clock P. M., and payday shall be Friday of each week.

Article VIII

The party of the first part agree to pay all transportation fare and room, board and other expenses actually incurred when working out of the city.

Classification of Work

The laying and setting of all floors, walls, ceilings, walk promenade, roofs, stair treads, hearths, fireplaces and decorative inserts, together with all marble plinths, thresholds or window stools used in connection with any tile work, also to prepare and set all concrete, brickwork or other foundation or material that may be required to set properly and complete such work; the setting and bedding of all tiling, stone, marble composition, glass mosaic or other materials forming the facing, hearth or fireplace of a mantel or the mantel complete, together with the setting of all cement, brickwork or other material required in connection with the above work; also the slabbing and fabrication of tile mantels, counters and tile panels of every description and the erection and installation of same. The building forming, shaping, construction or repairing of all fireplace work, wheather in connection with a mantel hearth or not and the setting and preparing of all material such as cement, plastermortar, brickwork, iron work or other materials necessary for the proper and safe construction and completion of such work, except that a mantel made exclusively of brick shall be conceeded to be Bricklayers work. It will be understood that the Tile refers to all burned-clay products as used in the tile industry, either glazed or unglazed and to all composition materials made in single units up to 15" x 20" x 2" except

quarry tile larger than 9″ x 9″ x 1¼″, also to mixtures of tile form in cement that are made for and intended for use as a finished floor surface, wheather upon exterior or interior floors, stair treads, promenades, roofs, garden walks, interior walls, ceilings, swimming pools and all places where tile may be used to form a finished or decorative purpose for practical use, sanitary finish and setting all accessories when built in walls or decorative inserts in other materials. The foreman over any tile work shall be a Tile Layer and at no time shall any one than a Tile Layer act as foreman on tile work. On any job where three or more Tile Layers are employed, the foreman shall receive One Dollar Thirty-seven and One Half Cents per hour.

Article IX

The party of the first part agree to pay all expenses exceeding two regular carfares of the Milwaukee area in any one work day.

_____ _____

_____ _____

_____

[fol. 236] In Supreme Court of Wisconsin

[Title omitted]

Minute Entry—June 4, 1936

And now at this day came the parties herein, by their attorneys, and this cause having been argued by Leon B. Lamfrom, Esq., for the said appellant, and by Joseph A. Padway, Esq., for the said respondents, and submitted, and the court not being now sufficiently advised of and concerning its decision herein, took time to consider of its opinion.

[fols. 237-238] IN SUPREME COURT OF WISCONSIN

Milwaukee Circuit Court

PAUL SENN, Appellant,

vs.

TILE LAYERS PROTECTIVE UNION, LOCAL No. 5, Charles Schreiber, Tile Layers Helpers Union, Local No. 47, and Herbert Sebastian, Respondents

Opinion by Justice Fairchild

JUDGMENT—June 29, 1936

This cause came on to be heard on appeal from the judgment of the Circuit Court of Milwaukee County and was argued by counsel. On consideration whereof, it is now here ordered and adjudged by this Court, that the judgment of the Circuit Court of Milwaukee County, in this cause, be, and the same is hereby, affirmed with costs against the said appellant taxed at the sum of Two Hundred Forty-three and 65/100 ($243.65) Dollars.

Justices Fowler and Nelson dissent.

[fol. 239] [File endorsement omitted]

IN SUPREME COURT OF WISCONSIN

PAUL SENN, Appellant,

v.

TILE LAYERS PROTECTIVE UNION, LOCAL No. 5, et al., Respondents

OPINION—Filed June 29, 1936

Appeal from a judgment of the circuit court for Milwaukee county: Otto H. Breidenbach, Circuit Judge. Affirmed.

Suit in equity begun on the 27th day of December, 1935, seeking to enjoin two labor unions and certain individuals who were officers of the unions from coercing the plaintiff

to refrain from engaging himself in the actual work of a tile layer or helper, the plaintiff being a contractor, and for other supporting relief. Judgment was entered in favor of defendants April 3, 1936, denying the injunction prayed for in the complaint.

The action is for a permanent injunction restraining defendants from interfering with or coercing the plaintiff in his business as a tile contractor. In such business he works with his own hands with tools of the trade, and employs one or two helpers not members of either of the defendant unions. He has no contractual relations with the defendants. The important facts appear in the findings by the trial court. The case was tried to the court and its findings include the following facts: The residence of the plaintiff and of the individual defendants. The organization of the unions with their business address, and the rela- [fol. 240] tion of the individual defendants to the unions; that the plaintiff for approximately four years conducted the business of a tile contractor in the city of Milwaukee; that he has now a show room in which he displays samples of tile; that he has, at times, employed one or two tile layers and helpers, depending upon the amount of work he has contracted to do at a given time; that he takes subcontracts for the installment of tile; that none of his employees were at any time members of either union; that the defendants desired the plaintiff to unionize his business and required of him the signing of a contract containing the following provision, referred to as Article 3:

"It is definitely understood that no individual member of a partnership or corporation engaged in the tile contracting business shall work with the tools or act as helper, but that the installation of all materials claimed by the party of the second part listed under the caption 'Classification of Tile Work' in this agreement shall be done by journeymen members of Tile Layers Protective Union Local No. 5."

that the plaintiff was willing to agree to the terms exacted by the unions with the exception of the conditions imposed by Article 3; that because of the refusal of the plaintiff, defendants caused the premises of the plaintiff to be picketed, the pickets carrying banners with the inscription "Unfair To Organized Labor;" that they caused the plaintiff to be followed from his place of business to the jobs so

that the jobs might be picketed; that the defendants sent letters to architects and contractors requesting them not to patronize the plaintiff and stating that if they did so, they would be picketed; that certain contractors in the city of Milwaukee entered into an agreement governing wages, hours and working conditions with the defendant unions, and are classed as union contractors; that by virtue of the agreement with union contractors, the defendant unions secure for their members advantages in their wages, hours and working conditions; that such wages are higher than the wages paid by the plaintiff; that the tile industry is [fol. 241] demoralized, and that the members of the defendant unions have been in competition with non-union tile setters and helpers in their effort to secure work; that for the purpose of enhancing the interest of their members, the unions have deemed it wise, in the protection of their rights in the prosecution of their trade, to require all employers agreeing to conduct a union shop to comply with "Article 3;" that plaintiff, by virtue of his status as an employer and contractor, is not entitled to membership in the defendant unions; that the requirements of the unions that a tile setter shall be a journeyman tile setter, who shall have acquired his practical experience by virtue of an apprenticeship consisting of service as an apprentice for not less than three years precluded the plaintiff from membership in the unions; that the picketing has been peaceful and without any unlawful acts; that the defendants agreed in open court to refrain from following the plaintiff from his place of business to his jobs, and to refrain from sending any further letters to architects or contractors, and to refrain from indulging in any acts or conduct mentioned in those letters. The court then concluded as matters of law; first, that a labor dispute exists between the plaintiff and the defendants; second, that it is not unlawful for the defendants "to advise, notify or persuade, without fraud, violence or threat thereof, any person or persons, of the existence of said labor dispute; that it is not unlawful for the defendants to give publicity to, and obtain or communicate information regarding the existence of the facts involved in such dispute whether by advertising, speaking, or patrolling any public street or any place where any person or persons may lawfully be, providing said acts are done without intimidation or coercion and without fraud, violence, breach of the peace, or threat thereof." The third conclusion was to the effect

that the defendants have not indulged in violence or fraud. [fol. 242] The fourth, fifth and sixth conclusions are as follows:

"That the agreement submitted by the defendants to the plaintiff, setting forth terms and conditions prevailing in that portion of the industry which is unionized, is sought by the defendants for the purpose of promoting their welfare and enhancing their own interests in their trade and craft as workers in the industry.

"That Article III of said agreement is a reasonable and lawful rule adopted by the defendants out of the necessities of the employment within the industry and for the protection of themselves as workers and craftsmen in the industry.

"That the plaintiff is not entitled to the relief prayed for in his complaint."

[fol. 243] FAIRCHILD, J.:

Appellant is engaged as a contractor in the tile setting business in Milwaukee. He conducts his business as a small concern, and in addition to hiring tile setters, he, himself performs services usually rendered by a journeyman or helper. It was established on the trial that appellant employed his brother approximately ten per cent of the time; that he entered into a partnership with William Neider, a former union journeyman who gave up his membership in the union to enter into the partnership, and also employed Arnold Holly, a suspended union member. From May, 1934, to May, 1935, out of a total of 1777 hours on jobs, appellant himself worked as tile setter 771 hours.

There were occasional conferences between appellant and the union officials before this contest developed. In March, 1935, a contract was submitted to appellant by the unions, Article III of which requires him to refrain from performing the work which it is his custom to perform, and to agree that such work be done by journeymen members of the Tile Layers Protective Union, Local No. 5. The ultimate object of the negotiations on the part of the respondents was to secure the unionization of appellant's business. The appellant asserts that he is willing to comply with all requirements covered by the union contracts except those which require him to refrain individually from working as a tile setter or helper. The dispute arises over the respective contentions thus outlined. It will readily appear that there

are elements involved in this controversy not present in the case of American Furniture Co. v. I. B. of T. C. and H. of A., Chauffeurs, Teamsters and Helpers General Local No. 200 of Milwaukee, decided herewith. The demand here by the unions is for the appellant to conform to a definite wage scale prevalent on union jobs, and to conform to a fixed number of hours approved by the union. They also insist that he conform to the rules of apprenticeship and [fol. 244] other working conditions prevalent in the industry where union rules prevail. The requirement that the employer personally refrain from working with the tools of the trade is important and vital to the craftsmen affiliated with defendant unions, because the practices sought to be prevented can so readily affect wages and hours of labor. It is pointed out by respondent that the membership in the union has decreased during the depression years, and that as a necessary requisite for a proper existence and livelihood, these craftsmen find it necessary to require employers to comply with the terms of Article III. Appellant's method of conducting his business brings into the situation a direct attack by him upon the means relied upon by the unions to protect their scale of wages, hours and working conditions against the cutting of prices and lengthening of hours of work.

The respondents insist upon their right to exert economic pressure against one who refuses to bring his shop up to union standards by refusing to agree to the union rules requiring the contractor to abstain from working with the tools of the trade, and on this, base their declaration that a labor dispute exists. There does not seem to be much occasion to question the existence of a dispute between the associations, which are committed to the protection of certain standards of wages and hours, with a contractor engaged in the same craft who proposes to work therein as a journeyman or a helper at a price and during hours that suit him individually and which are below the standard desired by the unions.

The respondents, by the use of the practice of picketing, seek to induce the appellant to abandon his methods and to conform to the union rules. The distinctions between one engaged in the tile setting business and one working as a journeyman or helper is apparent, and if the proposed contract is entered into by appellant, he will bind himself to respect the union classifications and distinctions. Ap-

[fol. 245] pellant has declined to sign the suggested contract unless there be eliminated therefrom the provisions which require him to desist from working with his tools and his helping generally in the work of installing material. Respondents insist that the particular rule to which appellant objects is one in the furtherance of the legitimate interests of the members of the unions. In view of our decision in the American Furniture Co. Case, supra, and the cases there analyzed in the opinion written by Mr. Justice Wickhem, it is apparent that, under the laws of Wisconsin, where the primary purpose of the acts complained of is to protect and improve the condition of those whom the unions represent, such action is justifiable, because it tends to promote the welfare of the members of the union engaged in the same craft. There is no effort to induce or compel the appellant to do any unlawful thing. If it be assumed that appellant cannot operate his business successfully upon the conditions insisted upon by the respondents, still no right of appellant now protected by law is invaded by respondents' efforts to bring appellant's business to union standard. American Furniture Co. v. I. B. of T. C. and H. of A., Chauffeurs, Teamsters and Helpers General Local No. 200 of Milwaukee, supra, and cases there cited. No question exists as to appellant's right to conduct a non-union shop under any terms he chooses. An economic contest has developed. Each of the contestants is desirous of the advantage of doing the business in the community where he or they operate. He is not obliged to yield to the persuasion exercised upon him by respondents.

The legislature, in outlining the public policy of this state, has precluded him from an appeal to the courts for assistance until some unlawful act has become imminent, or something has occurred to start in motion the administration of equity rules, or the performance of the duties of policing. The respondents do not question that it is appel-
[fol. 246] lant's right to run his own business and earn his living in any lawful manner which he chooses to adopt. What they are doing is asserting their rights under the acts of the legislature for the purpose of enhancing their opportunity to acquire work for themselves and those whom they represent. The nature of the controversy is one in which the court and law enforcing officers can have no interest other than to preserve the equality of each contender before the law, and to require that each refrain from

doing any unlawful act. Courts, though differing as to the allowable scope, pretty generally agree that picketing is a legitimate means of economic coercion, if it is confined to persuasion and is free of molestation or threat of physical injury or annoyance. Frankfurter & Green, The Labor Injunction, p. 31.

The respondents act of peaceful picketing is a lawful form of appeal to the public to turn its patronage from appellant to the concerns in which the welfare of the members of the unions is bound up. As stated by respondents' counsel in their brief, "the public is free to accept or reject the appeal and plaintiff is free to perform all work he can get in whatever manner he wishes to perform it." He may work long hours. He may bid for contracts at a low figure based on low wages for himself and on long hours. In the judgment of respondents, his conduct in this respect affects their opportunity of maintaining a standard of better wages, regulated hours and improved working conditions, and the collision of the two sets of rights, the one in appellant, the other in the respondents, creates a labor dispute within the definition of the code. Each appeals to public opinion. If the trade turns from one to the other as a result of this dispute, the injury is incidental, injuria absque damno.

It appears that when issue was first joined between the parties, considerable spirit was manifested on both sides and evidently acts occurred calculated to intimidate ap- [fol. 247] pellant and bring about a secondary boycott. The trial court said:

"That because of their statements made by their counsel in open court and in their presence, that they will not send any more letters to owners, contractors, or architects as hereinbefore referred to, and will not indulge in any of the acts or conduct referred to in said letters, the court concludes that no unlawful acts will be committed or will be executed or continued."

The discretion of the trial court in determining that there is no occasion for a restraining order in the particulars suggested is well within the scope of duties imposed on it. We are of the opinion that no occasion exists for overruling the lower court in this particular, and in other respects the judgment is approved.

By the Court.—Judgment affirmed.

[fol. 248] [File endorsement omitted]

IN SUPREME COURT OF WISCONSIN

[Title omitted]

DISSENTING OPINION—Filed June 29, 1936

FOWLER, J. (Dissenting):

I dissent in this case for the reason that in my opinion the case is not within the labor code and for the further reason that if it is within the code the picketing involved should be enjoined because it is done to coerce the plaintiff into doing an unlawful act. My reasons for considering the case not within the code and for considering that picketing to coerce the doing of an illegal act will be enjoined, are given in my dissenting opinion in American Furniture Co. v. I. B. of T. C. and H. of A. Chauffeurs, et al., decided herewith. In this connection I will only give my reasons for considering unlawful the act the defendants are seeking to coerce the plaintiff to do.

The picketing involved is done by the defendants for the purpose of coercing the plaintiff into signing a contract that is unlawful because it is in restraint of trade. Every contract in restraint of trade is illegal under the public policy of the state, as declared by sec. 133.01 Stats. A contract that restricts a promisor in the exercise of a gain-[fol. 249] ful occupation is a contract in restraint of trade. Every such contract is invalid if the restraint is unreasonable. Every restraint in such a contract is unreasonable if it is greater than is necessary for the protection of the persons for whose benefit the restraint is imposed or if it imposes undue hardship on the person restricted. Milwaukee Linen & Supply Co. v. Ring, 210 Wis. 467, 470, 246 N. W. 567; Restatement of Law of Contracts, secs. 513, 514, 515. In my opinion the proposed contract violates both these conditions of invalidity. The plaintiff could not do business as a contractor under the proposed contract without foregoing his right to labor in connection with his business, and if he gave up his business as a contractor his opportunity to work at his trade as a layer of tile would be diminished or destroyed because of exclusion from membership in the defendant union because he has not served three years as an apprentice under a journeyman tile

layer. It is nonsense to claim that three years of such apprenticeship is necessary to enable a competent plasterer to lay tile. It is without dispute that the plaintiff was a competent plasterer before he took up the trade of laying tile and it is without dispute that he is now a competent tile layer. The unreasonableness of the requirement of apprenticeship ties up with the unreasonableness of the restriction of the plaintiff's right to follow his chosen occupation of a tile layer and as a contractor of tile jobs.

The requirement that the plaintiff sign the contract proposed is an unreasonable requirement, in my opinion, for the protection of the defendants against the competition of the plaintiff, and it certainly is unreasonable in imposing such a hardship upon him as it does impose. Such contracts as the instant one are invalid because they tend "to [fol. 250] deprive the public of the services of persons in those capacities in which they are most useful and also tend to expose the public to the evils of monopoly." Tecktonius v. Scott, 110 Wis. 441, 449, 86 N. W. 672.

While the above is sufficient in my opinion to require reversal of the judgment herein and the granting of an injunction, I wish to say further that in the instant case, however it may be in the American Furniture Co. Case, supra, the picketing involved in my opinion deprives the plaintiff of liberty and property without due process of law. The Vth Amendment to the Constitution of the United States declares that no person shall be so deprived. If no person shall be so deprived, then no person shall so deprive him. Injury to business is deprivation of property. Truax v. Corrigan, 257 U. S. 312. To deprive one of his right to labor is to deprive him of his liberty. Allgeyer v. Louisiana, 165 U. S. 578, 589, 41 L. Ed. 832. Under the facts of the case the picketing involved injures the plaintiff's business, deprives him of opportunity to labor, and inflicts irreparable injury upon him for which he has no adequate remedy at law. Hence the picketing should be enjoined, unless the injury resulting to the plaintiff from it is effected through due process of law.

"The right to follow any of the common occupations of life is an inalienable right • • • It is a large ingredient in the civil liberty of the citizen. • • • The right to follow any of the ordinary callings of life, is one of the privileges of a citizen of the United States."

Butchers' Union Co. v. Crescent City, 111 U. S. 746, 762, 764, 765. The liberty mentioned in the Vth as well as the XIVth amendment "means, not only the right of the citizen to be free from the mere physical restraint of his person, [fol. 251] as by incarceration, but the term is deemed to embrace the right of the citizen to be free in the enjoyment of all his faculties; to be free to use them in all lawful ways; to live and work where he will; to earn his livelihood by any lawful calling; to pursue any livelihood or avocation, and for that purpose to enter into all contracts which may be proper, necessary and essential to his carrying out to a successful conclusion the purposes above mentioned." Allgeyer Case, supra. As quoted in Cameron v. International Alliance T. S. E., 118 N. J. Eq. 11, 176 Atl. 692:

"'There is no more sacred right of citizenship than the right to pursue unmolested a lawful employment in a lawful manner. It is nothing more or less than the sacred right of labor'".

"The right of a workman to the 'free use of his hands' has been described as one 'of which the legislature cannot deprive him, one which the law of no trades union can take from him, and one which it is the bounden duty of the courts to protect.' 'A man may not barter away his life or his freedom or his substantial rights.' Home Ins. Co. v. Morse, 20 Wall. 445, 22 L. Ed. 365."

These statements imply that the right to labor with one's own hands when one will and as he will, the right to follow a chosen occupation or business, the right to earn one's own living, and the right to contract are so sacred, so voluable, so important to the individual, that no one may be coerced into giving them up, and when as here the means of coercing their surrender results in irreparable injury to the individual, the coercion should upon established principles of equity be enjoined. We are not here concerned with licensing restrictions or the like imposed under the police power for the protection of the public. We need only consider the facts of the instant case to perceive the denial and deprivation of liberty of the plaintiff and I perceive no "due process" by which the result is produced. The plain- [fol. 252] tiff is a man of family with no means of support except his labor. He is making a living for himself and family by laboring as a tile layer and contracting for small

jobs of tile laying to provide opportunity for so laboring. He employs "helpers" on occasion, and occasionally employs "journeymen" tile layers to help him. He is willing to employ none but members of the defendant labor union to aid him. He is willing to join the defendant union if it will receive him. He will pay the union scale of wages and conform to union hours. The only provision of the proposed contract to which he will not accede is the one denying him the right to labor with his own hands and tools upon the jobs he contracts to perform. He has not sufficient capital to enable him to take any but small jobs. Such jobs as he can handle will yield no profit unless he works upon them himself. He cannot make a living at laying tile as a journeyman without membership in the defendant union, and that is denied him because he has not served three years as apprentice to a journeyman tile layer, and without such membership he cannot procure sufficient employment as a journeyman. To picket his jobs will injure his business as a contractor and reduce his earnings below sufficiency for support of himself and family. Destruction of plaintiff's business through picketing is the object of the defendants and is likely to be attained if the picketing be continued, with resulting liability imposed upon the public for the support of himself and family, with resulting loss to the public of the benefit of his services as a tile layer, denial to the public of the benefit of his competition and, as it is the expressed purpose of the defendants to apply the restriction that it would place upon the plaintiff to all journeymen [fol. 253] tile layers who shall aspire to become contractors, with resulting imposition upon the public of a monopoly of the tile laying business in the hands of members of the defendant union. Business in contracting for such work as tile laying ordinarily begins with small beginnings, and if successful gradually extends to more considerable proportions. The plaintiff's road to success in such business is blocked, and the entry into such business is blocked to every worker, by the requirement of the defendants to which plaintiff objects. The requirement that no contractor shall work with his own hands and his own tools upon a job would foreclose every worker, union as well as non-union, from entering the contracting business unless he has or is able to procure capital otherwise not necessary for entry into and prosecution of the business to success. I cannot believe that

such result is made lawful by the claim that it is nothing but economic pressure applied to the furtherance of the cause of workers as a whole or of that class of workers belonging to labor unions. The view here expressed of right to an injunction under the situation here involved has the support of the only courts that have ever passed on situations closely similar. Roraback v. Motion Picture Machine Operators' Union, 140 Minn. 481, 169 N. W. 529; Hughes, et al v. Kansas City Motion Pictures M. O. Local No. 170 et al, 282 Mo. 304, 221 S. W. 94; Parker Paint & Wall Paper Co. v. Local Union No. 813, et al; 105 S. W. (va.) 911; 16 A. L. R. 222. The practice upheld by the court is Un-American, oppressive and intolerable. It is contrary to the concept that I have always had of the fundamental and inalienable rights of the individual citizen secured to him [fol. 254] by the constitution of the United States. I cannot see that concept held for naught by this court without protest. And I will not yield that concept until it is declared erroneous by the final arbiter of that constitution. My concept of the inherent rights of man under the constitution may be merely an ideal that I may eventually have to give up, but I am still strong in my faith in it; and I will ever cherish it unless it shall be destroyed by the ultimate authority, the Supreme Court of the United States.

The defendants claim that absence of due process in their depriving the plaintiff of his property and his liberty is avoided by the provision of the code declaring peaceful picketing lawful and because, as they say, the plaintiff is free to work with his hands and tools upon his jobs if he wants to. As to the latter, the plaintiff is no more free so to work in the face of the threat of destruction of his business and deprivation of his means of livelihood by continued and incessant picketing than he would be in the face of a threat to "beat him up" every time he took a contract for tiling. In the latter case he could make his contract and take his beating, if he wanted to, but it is quite apparent that he would not want to, and would refrain from subjecting himself to the threatened beating. A labor union may not use its power to such ends and with such effect. As said in Gompers v. Buck's Stove & Range Co., 221 U. S. 418, 55 L. Ed. 797, 34 L. R. A. (NS) 874:

"The law, therefore, recognizes the right of the workingmen to unite and to invite others to join their ranks, thereby

making available the strength, influence, and power that come from such association. By virtue of this right, powerful labor unions have been organized.

"But the very fact that it is lawful to form these bodies, with multitudes of members, means that they have thereby acquired a vast power, in the presence of which the individual may be helpless. This power, when unlawfully used [fol. 255] against one, cannot be met, except by his purchasing peace at the cost of submitting to terms which involve the sacrifice of rights protected by the Constitution; or by standing on such rights, and appealing to the preventitive powers of a court of equity. When such appeal is made, it is the duty of government to protect the one against the many, as well as the many against the one."

As to the peaceful picketing declared lawful by the code, whether or not it may be declared lawful in furtherance of a strike of employees, it passes the bounds of reasonableness to say it may be used to coerce one into refraining from working with his hands and the tools of his trade or following his chosen calling or making contracts in the prosec*u*ion of his business. No court has ever yet squarely held that picketing, peaceful or otherwise, is lawful except in aid of a strike. The case of Exchange Bakery & Restaurant Co. v. Rifkin, 245 N. Y. 260, does hold, in effect, that peaceful picketing *is* aid of a strike is lawful. Other cases so hold or imply. In the Rifkin Case, supra, only three employees struck. The rest stuck to their jobs. It is stated in effect in the opinion in the American Furniture Co. Case, supra, that, if as held in the Rifkin Case peaceful picketing by a union may be enjoined when only three employees are striking, it may be where no employees are striking and where there is no strike at all. This does not follow. In American Steel Foundries v. Tri-City Trades Council, 257 U. S. 184, a labor union was prosecuting a strike. Only two employees were shown to have participated in picketing in aid of it. The judgment enjoined all picketing by any of the defendants but the injunction, while upheld as to the other defendants, was so modified as to these two as to permit them to use "persuasion" to induce employees to quit work. The Tri-City Case was under the Clayton Act, but it plainly declares that striking employees may have rights [fol. 256] that non-strikers do not have, and that an injunc-

tion may issue against the latter that will not issue against the former.

That peaceful picketing is not made lawful in every controversy growing out of a labor dispute by the declaration of the code may, I think, be clearly shown by a few hypothetical cases. Suppose there is a strike of W. P. A. workers and they come to the capitol city in a great horde. They demand of the State Administrator that he increase their wages. This he is powerless to do. They make like demand upon the Governor of the state and he also is powerless to meet their demand. They then post pickets to patrol the sidewalk in front of the State Administrator's house bearing placards denouncing the administrator as unfair to labor although "fairly stating" "the essential facts of the labor dispute" and not bearing any misstatement of fact, conformable in all respects to the placarding upheld by the judgment of the court herein. The annoyance is so offensive to the State Administrator and his family that he leaves his house with his family and lives in a hotel until the picketing subsides. Strikers post pickets to patrol the public halls of the capitol in front of the entrance to the Governor's offices bearing placards containing like denunciation of the Governor and like statements of the "essential facts of the dispute" without falsifying. Is this picketing lawful? Suppose the case of Mrs. Blank. She has a family of several small children. She requires help in the care of her children and the performance of her household duties. The family income cannot spare over $3.00 per week to devote to that purpose. A maid out of employment is willing and desires to render the required service for the proffered wage and accepts the employment. A labor union, the members or [fol. 257] officers of which consider that $3.00 per week is not a sufficient wage, maintain pickets on the sidewalk in front of her home bearing placards calling attention to the fact that Mrs. Blank pays her maid only $3.00 per week and stating that she is "unfair to labor." Must Mrs. Blank and her husband submit to the annoyance and nuisance of this "peaceful picketing" week in and week out because a statute declares that peaceful picketing in labor disputes is lawful? These cases are not stated as presenting exact parallels to the instant case. They are stated as illustrating that all picketing is not lawful, athough it falls within the

statutory declaration. Whether it is lawful or not depends upon the instant situation involved.

"the legislative power of a state can only be exerted in subordination to the fundamental principles of right and justice which the guaranty of due process in the XIVth Amendment is intended to preserve."

Truax Case, supra.

The defendants claim and base their claim of the validity of the defendants' acts upon the proposition that their demand is as stated in their briefs "a reasonably just one." It is of course fundamental that statutory provisions restricting the liberty and property of the citizen must be reasonable or they violate due process. They must bear a relation to the health, safety, good order or welfare of the public. The statute declaring peaceful picketing lawful bears no relation to the public health. It bears no relation to the safety or good order of the public. So far as it has any effect on safety and good order the tendency is to disserve rather than serve them. And as I understand the welfare requirement, the welfare served must be that of the public, not that of a particular class of the public to the detriment of another class of the public. To rule that peaceful [fols. 258-259] picketing in every case is lawful, would serve the interest of organized labor to the detriment of unorganized labor and not induce to the welfare of the public as a whole. If this may be done a legislature could enact any statute whatsoever affecting the rights of the citizen under the claim that it serves the public welfare and it would be immune from attack as withholding due process. To justify statutes affecting one class of the society to the detriment of another class, if there can be any such justification, the advantage to the one class must at least so overbalance the disadvantages to the other that the welfare of the public as a whole is thereby advanced. The instant statute, if applied to the situation here involved, in my opinion does not meet these tests.

The acts of the defendants here involved being in my opinion unlawful I see no need to discuss the question of the validity or invalidity of the injunctional provisions of the labor code.

I am authorized to state that Mr. Justice Nelson concurs in this opinion.

[fol. 260] IN SUPREME COURT OF WISCONSIN

[Title omitted]

MOTION FOR REHEARING—Filed July 13, 1936

Now comes the plaintiff and appellant above named, by Lamfrom Tighe Engelhard & Peck, his attorneys, and moves the court for a re-hearing in the above entitled action for the reasons and on the grounds to be set forth in the printed argument hereafter to be filed by the plaintiff and appellant in support of said motion.

Dated this 10th day of July, 1936.

Lamfrom, Tighe, Engelhard & Peck, Attorneys for Plaintiff and Appellant.

[fol. 261] Copy received. Jul. 11, 1936. Jos. A. Padway, Attorney.

[File endorsement omitted.]

[fol. 262] IN SUPREME COURT OF WISCONSIN

[Title omitted]

ORDER RETAINING RECORD—July 13, 1936

The said appellant having moved for a rehearing in this cause, it is now here ordered that the record be retained in this Court until the final determination of said motion.

[fol. 263] IN SUPREME COURT OF WISCONSIN

[Title omitted]

ORDER DENYING MOTION FOR REHEARING—September 15, 1936

The court being now sufficiently advised of and concerning the motion of the said appellant for a rehearing in this cause, it is now here ordered that said motion be, and the same is hereby, denied with $25.00 costs.

[fol. 264] [File endorsement omitted]

IN SUPREME COURT OF WISCONSIN

[Title omitted]

OPINION—Filed September 15, 1936

FAIRCHILD, J. (on motion for rehearing):

Upon the motion for rehearing, the plaintiff contends that to enforce the decision of this court would deprive him of the right to make his own livelihood with his own hands and tools, and that even if a labor dispute, as defined by secs. 268.18 to 268.29, Stats. 1933, now secs. 103.51 to 103.63, Stats. 1935, exists, that sec. 103.56 and 103.62, Stats. 1935, are unconstitutional and invalid as violating both the Wisconsin and federal constitutions. These contentions were urged in the original brief of plaintiff, were fully considered by this court in the decision of this case, and held to be without merit. These claims were not more particularly treated in the opinion deciding this case, because, as disclosed in the opinion, the views of this court upon the constitutional questions raised were decided adverse-ly to the contentions of plaintiff in the case of American Furniture Co. v. I. B. of T. C. and H. of A. etc., decided at the same time.

By the Court—Motion for rehearing denied with $25 costs.

[fol. 265] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 266] SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS TO BE RELIED UPON AND DESIGNATION AS TO PRINTING RECORD—Filed January 16, 1937

Comes now the appellant and adopts its Assignment of Errors as its statement of the points to be relied upon, and represents that the record as filed is necessary for the consideration of the case.

Dated, January 8, 1937.

Leon B. Lamfrom, Attorney for Appellant.

Service admitted. Jos. A. Padway, Attorney for Appellees.

[fol. 267] [File endorsement omitted.]

Endorsed on cover: File No. 41,198. Wisconsin, Supreme Court. Term No. 658. Paul Senn, appellant, vs. Tile Layers Protective Union, Local No. 5, Charles Schreiber, et al. Filed January 16, 1937. Term No. 658, O. T., 1936.